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IFAR Journal

INTERNATIONAL FOUNDATION FOR ART RESEARCH

SEARCH CONTINUES FOR STOLEN PICASSOS

EXPERT OPINIONS & LIABILITIES

GERMAN ANGST OVER RETURN OF PAINTING

WHO IS A QUALIFIED APPRAISER?

INCORPORATING STOLEN ART ALERT

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COVER: Pablo Picasso (Spanish, 1881-1973). *Maya with a Doll.* Oil on canvas. 73 x 60 cm. Dated l/r: Jan. 22, 1938. (Zervos IX: 101). Stolen from the Paris home of Diana Widmaier-Picasso on February 26–27, 2007. See story on p. 8. 2007 Estate of Pablo Picasso /Artists Rights Society (ARS), New York.

TO THE EDITOR

QUALIFIED APPRAISERS AND ART CONTRIBUTIONS

The government has required, quite sensibly, that persons who contribute art to a charitable organization, such as a museum, obtain an appraisal from an independent source that is reliable.

The recently enacted Pension Protection Act of 2006, which contains various provisions relating to charitable contributions, has a seemingly useful provision relating to the qualification of a person who provides an appraisal supporting the value of the taxpayer's contribution. It defines such a person — a "qualified appraiser" — as an "individual" who 1) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimal education and experience requirements . . . and 2) regularly performs appraisals for which the individual receives compensation.

As with much well-intended legislation, this proposal can do more harm than good. The purpose of requiring a qualified appraisal for a charitable contribution is to insure that reasonable and not inflated values are provided to support the value of the specific contribution and thus the permissible tax deduction. This definition will not serve the purpose for which it was intended. A taxpayer can readily shop for an "individual" appraiser who meets the language of the statute and disregard those who will not accommodate him or her. There is no requirement that the taxpayer advise the Internal Revenue Service of other opinions that may have been received.

Organizations such as the Art Dealers Association of America (ADAA) and the Private Art Dealers Association (PADA) are organizations which have provided appraisals for tax purposes for many years and comprise dealers with a wealth of experience. For nearly forty years, the ADAA's Appraisal Service has appraised for tax purposes works of art donated to museums. Over this period it has appraised more than 24,000 works of art with a claimed value of more than $2 billion. PADA for more than fifteen years has provided a similar service and only accepts work for appraisal in which its members have expertise. Before the PADA Appraisal Service was instituted, the organization consulted with members of the IRS Advisory Panel as well as IRS officials who provided assistance in the design of the PADA service. Both organizations submit the work to more than one dealer for an opinion, and the names of the dealers consulted are not disclosed to the taxpayer. Nevertheless, neither the ADAA nor the PADA Appraisal services could be a "qualified appraiser" because neither is "an individual."

It is thus a paradox that the very process which is intended to restrict unreasonable valuations — and thereby impair governmental revenue — will have a converse result. As presently enacted, it will preclude the two organizations having the most experience in the area to have a position in determining the value of art for tax purposes. The statute should be amended or clarified by statute or regulation to insure that the term "individual" means a person, although in corporate form.

Franklin Feldman
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NEW TAX LAW REDEFINES "QUALIFIED" APPRAISER AND APPRAISAL

Art Industry Response Is Mixed

Although the Internal Revenue Service (IRS) calls the Pension Protection Act (PPA) of 2006,[1] the "most sweeping" tax law in the last 30 years," it isn't the pension provisions that have drawn the attention of the art industry. The Act, which became law last August 17, has several sections that affect art professionals, collectors, and institutions. It places restrictions, for example, on partial art gifts – known as fractional gifts – to museums and other charities, and it sets up more stringent record-keeping for charitable donations.

The PPA also deals with art valuation. There are increased penalties against art owners for inaccurate appraisals – even those performed by professionals – and it pointedly creates a new penalty for appraisers whose reports result in a "substantial or gross valuation misstatement" (over or under-valuation), if they knew or "reasonably should have known" that the appraisal would be used for tax purposes. (Art owners generally prefer higher valuations for charitable donations and lower valuations for estate and gift taxes.)

One component of the section dealing with valuation has received little attention in the press, but has generated much reaction. It concerns the revised definitions of *who* is a "qualified appraiser" and *what* constitutes a "qualified appraisal." In October, the IRS published a "transitional" guidance, in the form of a Notice,[2] relating to these revised definitions.

The IRS "invited Comments." In response, dealers groups, including the Private Art Dealers Association (PADA) and the Art Dealers Association of America (ADAA), and the two major auction houses, Christie's and Sotheby's, among many other groups and individuals, submitted written Comments.[3] (See also "Letter to the Editor" in this issue of *IFAR Journal.*) And well past the January 17th deadline, the IRS Chief Counsel's Office told IFAR they were still receiving Comments and "are willing to receive more until the date when they put out the next guidance." That date is not known.

NEW DEFINITIONS

What *are* the new definitions? Under the new law,

"A 'Qualified Appraiser' means an **individual** who —

(I) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary,

[NOTE: The October IRS Notice clarifies that the "minimum education and requirements" will be met if the appraiser has:

a) successfully completed college or professional-level coursework that is relevant to the property being valued;

[1] Pub. L. No.109-280, 120 Stat. 780 (2006) (the "PPA").

[2] IRS Notice 2006-96 — "Guidance Regarding Appraisal Requirements for Noncash Charitable Contributions."

[3] The Comments submitted to the IRS regarding Notice 2006–96 are available for "public inspection and copying" and can for the most part be found by searching "Tax Notes Today."

b) obtained at least two years of experience in the trade or business of buying, selling, or valuing the type of property being valued, and c) fully described in the appraisal the appraiser's education and experience that qualify the appraiser to value the type of property being valued.]

(II) regularly performs appraisals for which the individual receives compensation, and

(III) meets such other requirements as may be prescribed by the Secretary in regulations or other guidance."

The wording in this definition has created uncertainty. One spotlight is on the term "individual." Respected dealer associations and auction houses have appraised artworks for years, and they are not "individuals." Indeed, it was the ADAA that helped the IRS set up its own Art Advisory Panel in 1969, and many ADAA members have sat on that panel — which helps the IRS review appraisals of artwork donated to museums and valued for estates.

ADAA's Appraisal Service relies on more than one dealer (usually three), and their names are not disclosed to the client or to each other. The ADAA's Comment to the IRS calls its procedures a "collaborative effort," not "individual." The Private Art Dealers Association's Appraisal Service was modeled after the ADAA's and is similarly affected by the new Act.

Christie's, too, is concerned about the word "individual." It suggests that all references to "individual" in both the new law and the transitional guidance be replaced with "person," so that "corporate individuals" would also qualify. As the Comment submitted to the IRS on behalf of Christie's Appraisals Inc. states, "Congress could not have possibly intended to exclude some of the world's most competent major corporate appraisers from continuing to provide qualified appraisals."

Sotheby's, in its Comment, points with concern to the education requirement, which, it notes, "places undue emphasis on classroom training, without putting appropriate emphasis on experiential learning." Their Comment goes on to say that this is a particular issue for valuations of "rare art or collectibles," where "very little coursework — at any level — exists . . ." In fact, it adds, "Sotheby's specialists would be among the small universe of people competent to teach such coursework."

The ADAA's Comment provides examples of famous dealers, experts in their respective fields, who were not formally trained and, therefore, might not satisfy the new education requirement. Pierre Matisse, for example, son of Henri, and "the leading authority on the works of his father as well as such artists as Chagall and Miró, had no formal art history training. . . . Leo Castelli . . . likewise had no formal art history or appraisal training."

QUALIFIED APPRAISALS

There are similar concerns about the definition of a "qualified appraisal," which, among other things, would be an appraisal:

". . . conducted by a qualified appraiser in accordance with generally accepted appraisal standards . . ."

"Generally accepted appraisal standards," however, may be difficult to pin down. The IRS does offer some assistance in its October Notice. It says, an appraisal "will be treated as having been conducted in accordance with generally accepted appraisal standards" if it is "**consistent** with the substance and principles of the

Uniform Standards of Professional Appraisal Practice" — also known as "USPAP." [4]

Some people have interpreted this phrase to mean that the appraisal "must" be USPAP compliant. Indeed, the Appraisers Association of America said as much in an email sent in January announcing upcoming USPAP courses.[5] But the IRS Notice clearly states — and the IRS itself confirmed to IFAR — that appraisals need only be *consistent* with the substance and principles of USPAP, as there are other acceptable appraisal standards.

THE VIEW FROM A DIFFERENT LENS

Not surprisingly, appraisers associations, comprised of "individual" professional art appraisers, whose reports *are* USPAP compliant, have a different — and more favorable — take on the revised IRS definitions of qualified appraisers and appraisals. Aleya Lehmann, Executive Director of the Appraisers Association of America (AAA), told IFAR: "The new regulations make sense. It goes against USPAP for an 'organization' to do appraisals. ***One*** person signs off on an appraisal. It's in accordance with every ethical guideline." She notes that AAA, and two other appraisal groups — the American Society of Appraisers (ASA) and the International Society of Appraisers (ISA) — wrote "a joint letter to Congress when it was considering the new legislation," but they "did not lobby specifically to insert the word 'individual'," although she agrees it should be there. She also agrees with the new law that the appraiser should earn an appraisal designation from a "recognized professional appraiser organization."

Ms. Lehmann went on to say that AAA met with a dealer association and several auction houses to discuss the new legislation and suggest that "some of their members and staff join our appraisal organization. They're very knowledgeable. We respect them." Essentially, she added, the new legislation was "meant to address *real* abuses — valuations that were out-of-line. Congress was not talking about disagreements over comparables, but real abuses. . . . Christie's, Sotheby's, ADAA, PADA, and the appraiser organizations are not, in my opinion, the target of the legislation; we all, however, approach valuation from different perspectives."

Sandra Tropper, Chair of the Personal Property Committee of the ASA, like Ms. Lehmann, "is very much in favor of the more restrictive standard [for] qualified appraiser and appraisal." The ASA, which, unlike the AAA, sent in a Comment in response to the IRS Notice, believes that "the restrictive approach in the new law is good. Appraisers *should* know what the ethical standards in the profession are," and the standards "are clearly stated in USPAP, which is followed by all three of the major educating personal property appraisal organizations. . . . USPAP says that the *individual* who writes the document has to sign it."

It is not clear whether the Comments submitted to the IRS will prompt revisions to the legislation. As of June 2007, when *IFAR Journal* went to press, the IRS was "still studying the Comments" and accepting new ones. At some point, they told IFAR, the IRS and Treasury Department will issue concrete regulations, but "until those regulations are effective," taxpayers "may rely" on the IRS Notice published in October.

— S. F.

[4] USPAP is developed by the Appraisal Standards Board of the Appraisal Foundation.

[5] Email sent on January 22, 2007 begins: "IRS Regulations now require USPAP-compliant appraisals for all Noncash Charitable Donations! . . . ." The email is cited in the Comment submitted by Christie's Appraisals.

LEGAL BULLIES BEWARE

MONTANA COURT RULES AGAINST COLLECTOR AND LAWYERS FOR INTIMIDATING ART EXPERT

The Supreme Court of Montana minced no words when it delivered a scathing decision in March[1] in favor of an art expert and against an art owner, his lawyer, and his lawyer's law firm[2] regarding a dispute over the attribution of a painting.

The owner believed the painting — a watercolor — was by Charles Russell, a major artist of the American West. The expert said it was in fact a work by Olaf Seltzer, a lesser known protégé of Russell's. The difference in attribution was significant. If the work was by Russell, it might sell for $650,000, whereas a similar work by Olaf Seltzer would go for around $50,000.

The plaintiff art expert, Steve Seltzer, should know a Seltzer when he sees one. He is a grandson of Olaf Seltzer, and is considered to be the foremost expert on his grandfather's work. He is also a Russell authenticator. Contacted in 2000 for an opinion, Steve Seltzer said the work was by his grandfather, not Russell. Another expert concurred.

The owner of the work — Steve Morton — refused to accept their opinions, hired an attorney, who tried to pressure the specialists to recant their opinions, and then sued. The case was dismissed, but Seltzer, who had incurred legal fees and emotional distress, then sued Morton, his lawyer and the law firm for malicious prosecution and abuse of process. The lower court ruled in Seltzer's favor, but both sides appealed.

In a hard-hitting, 105-page decision that upheld the lower court's compensatory damages of $1.1 million, and punitive damages of $100,000 against the collector, Morton; $150,000 against his attorney; and a hefty $9.9 million dollars against the law firm, Gibson, Dunn & Crutcher LLP, the Montana Supreme Court said that Gibson, Dunn's "use of the judicial system amounts to legal thuggery." The law firm's behavior against the expert, it added, was "truly repugnant to Montana's foundational notions of justice and is therefore highly reprehensible," all the more so because the firm (with more than 800 attorneys and offices in several states and Europe) is "highly experienced."

> **Gibson, Dunn's "use of the judicial system," the court said, "amounts to legal thuggery."**

The case is unusual both in the amounts of damages awarded and the firmness of the decision in favor of the art expert. Despite the pressure, he did not recant his negative opinion, which may give comfort to other art experts whose knowledge and integrity are sometimes challenged, and livelihood threatened, by disappointed art owners.

Elsewhere in this issue of *IFAR Journal* (see Judith Bresler, "Expert Opinions and Liabilities — An IFAR Update," page 16) is a more detailed discussion of the facts and legal reasoning in this case. But, in brief, it centers on the art collector, Morton, who, with his brother acquired the disputed painting (Fig. 1) — a watercolor on paper entitled "Lassoing a Longhorn" bearing a signature saying "C.M.Russell 1913" — in May 1972 from the Kennedy Galleries in New York. The Galleries had acquired the work from the Amon

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[1] *Seltzer v. Morton et al.*, No. 05–378, Supreme Court of Montana, 2007 MT 62; LEXIS # 98, March 12, 2007.

[2] The lawyer, Dennis Gladwell, was a retired partner and Of Counsel to the firm, Gibson, Dunn & Crutcher, LLP. As such, to take the case, he needed the permission of one of the firm's partners, who then was formally assigned to the case.

Carter Museum in February 1972, which, in turn, had acquired it from the Newhouse Galleries in New York in 1939. Nothing is known of the work before that.

The Amon Carter included the work in its 1966 catalogue of the museum's Russell collection, written by the great Russell specialist, Frederic Renner, but Renner did not include it in a 1974 museum catalogue. It's not clear whether the reason is that, by this time, he had doubts as to the attribution, or simply that the work was no longer in the museum's collection. (In the course of the current lawsuit, however, it was revealed that Renner later expressed doubts about the painting to the plaintiff art expert, Steve Seltzer.)

In 2000, Steve Morton decided to sell the watercolor at the annual auction of Western art at the Coeur d'Alene Art Auction house in Idaho, which had estimated its value as $650,000 on the assumption that it was an authentic Russell. The auction house consulted Seltzer for an opinion as to authenticity. Seltzer, already familiar with the work, said that it was by his grandfather, and provided reasons. His opinion was seconded

FIGURE 1. ***Lassoing a Longhorn*** **(aka "Roping the Longhorn"). Purchased as a work by Charles M. Russell and reattributed to Olaf Seltzer.**

by Ginger Renner, the widow of Frederic and an expert on Russell in her own right. Despite these negative opinions, Morton tried to sell the work as a Russell but failed. He then hired the defendant lawyer and law firm, who demanded that the art specialists — Seltzer and Renner — recant their opinions. They did not, and that led ultimately to the trial and the ruling by Montana's Supreme Court.

As of June 2007, it is not known whether Gibson, Dunn or the other defendants will appeal.

— S. F.

FIVE-YEAR SENTENCE FOR CELLINI SALTCELLAR THIEF

A retrial proved to be of no help to the man who admitted stealing the world's most famous salt and pepper shaker.

Robert Mang, who was first sentenced to four years by a lower court in Vienna in 2006, had his sentence increased to five years on June 26 after Austria's high court ordered a retrial. The outcome was somewhat ironic, since Mang insisted that the theft was a drunken prank, and he became something of a hero to the Viennese press.

The saltcellar (also known as a saliera), stolen from the Kunsthistorisches Museum in Vienna in May 2003, is an intricately carved gold and enamel masterpiece by Renaissance goldsmith Benvenuto Cellini. (See *IFAR Journals* Vol. 6, no. 3; Vol. 8, no. 2.) Its theft triggered a worldwide search, which yielded results two and a half years later, in January 2006, when Mang was caught and led police to a wooden area just north of Vienna, where he had buried it.

The saltcellar was found in relatively good condition, but investigation into the theft revealed lax security at the museum itself. (Museum guards, for example, ignored an alarm during the theft, and workmen had left scaffolding and steps outside a museum window.)

Mang, a Vienna resident with no prior arrests, owned a security equipment company and is a specialist in alarm systems. Critics of the museum pointed out, however, that while he had special skills in overcoming alarms, the lax security made those skills superfluous.

— S. F.

SEARCH CONTINUES FOR PICASSOS STOLEN FROM THE ARTIST'S FAMILY

The theft in February — in Paris — of two Picasso paintings and a drawing seems to be developing into a drama without a speedy *dénouement.* Several months after thieves broke into the home of Picasso's grand-daughter — Diana Widmaier-Picasso — and got away with the art works — worth many millions of dollars — there is still no word on their whereabouts.

There is *some* news, however. After initial questions as to whether the works were insured, it now appears that they were not. Expectations that they *were*, may have been a motivation for the theft. The initial police report and flurry in the press have been followed by little other public information. The family, to our knowledge, has not received a ransom request, nor have they announced a reward for information leading to a recovery.

The two stolen paintings are well known and are catalogued in the multi-volume Zervos catalogue raisonné of Picasso's works. The paintings are too well known to be marketable, which raises the perennial question of why, if not for ransom, someone would steal them.

The paintings are a 1938 portrait of Diana's mother, Maya, shown holding a doll at the age of three (Fig.1 and Journal cover), and a 1961 *Portrait of Jacqueline*, Picasso's second wife, whom he married that same year (Fig. 2). The stolen drawing (Fig. 3) shows Marie-Thérèse Walter, Maya's mother, at the age of 21. Marie-Thérèse was Picasso's lover and muse for many years, starting in the late 1920s, while he was married to his first wife, Olga. Blonde and voluptuous, she is the subject of some of Picasso's most famous paintings.

FIGURE 1. Pablo Picasso. *Maya with a Doll.* Oil on canvas. 73 x 60 cm. Dated l/r: Jan. 22, 1938. (Zervos IX: 101). Stolen from the Paris home of Diana Widmaier-Picasso. © Estate of Pablo Picasso /Artists Rights Society (ARS), New York.

The theft occurred during the night of February 26-27. Diana and her mother, Maya, were both asleep in Diana's house on the Rue de Grenelle, a fashionable street on Paris' Left Bank (Vll Arr.). Diana came home that evening around 10:30 p.m. with her boyfriend (reported in *Women's Wear Daily* and other papers to be Gilles Bensimon, creative director of *Elle* magazine). At some point after they came in, they reportedly turned off the security alarm.

Diana was awakened by a noise during the night and awakened Bensimon. The couple looked around but didn't notice anything wrong. The theft was discovered in the morning. *Maya with a Doll (Maya à la poupée)* had been unhooked from its position above the mantelpiece in the salon, while the *Portrait of*

FIGURE 2. Pablo Picasso. *Portrait of Jacqueline.* Oil on canvas. Dated u/r: February 11, 1961. (Zervos XIX:425). Stolen from the Paris home of Diana Widmaier-Picasso. © Estate of Pablo Picasso /Artists Rights Society (ARS), New York.

FIGURE 3. Pablo Picasso. *Marie-Thérèse at 21.* Lead pencil drawing and collage on paper. 19" x 12". Stolen from the Paris home of Diana Widmaier-Picasso. © Estate of Pablo Picasso /Artists Rights Society (ARS), New York.

Jacqueline, a much larger work, was cut from its frame. There was no sign of forcible entry.

In March, an official preliminary investigation ("information judiciaire") was begun in Paris. And the police units for art thefts, the BRB (Brigade de répression du banditisme) and OCBC (L'Office central de lutte contre le traffic de biens culturels), were put in charge of the investigation. On April 17, Maya — the owner of the paintings — and Diana appeared in court to make a formal complaint as part of the French penal process ("plainte avec constitution de partie civile").

When Picasso, who was born in Spain, died in France in 1973, thousands of his artworks — in all media — were in his personal collection. Most were given to the French government in lieu of inheritance taxes. They are the core of the collection of the Musée Picasso in Paris. But the family members also kept many works.

Works by Picasso — one of the most prolific and most famous artists who ever lived — have frequently been stolen (and faked!). There are currently more than 400 Picassos in the Art Loss Register's theft database. This is not the first time that works by Picasso were stolen from a member of his family. Another granddaughter, Marina, (the daughter of Picasso's son with his wife Olga) was the victim of a theft in Cannes, in 1989, but those works were later recovered.

— S. F.

THE SCREAM AND MADONNA – CODA

Although the case involving the theft of two of Norway's most famous paintings — Edvard Munch's *The Scream* and *Madonna* — seemed to have ended in 2006 with a trial and the recovery of the works three months later, there have in fact been several new developments.

The two artworks were stolen in a brazen daytime theft from the Munch Museum in Oslo in August 2004 and recovered — in damaged condition — in August 2006 (see *IFAR Journal*, Vol. 7, no. 2; Vol. 9, no. 1).

Six men were charged, and three were convicted and sentenced in May 2006.

THE CASE CONTINUES

The men appealed. In April of this year, with the damaged paintings in evidence, an appeals court in Oslo upheld the convictions of two of them – Petter Tharaldsen, said to be the driver of the getaway car, and Bjorn Hoen, accused of being the mastermind of the theft. They were sentenced to 9½ years and 9 years, respectively – an increase, in both cases, over their original prison terms. A third man, Stian Skjold, who had been acquitted at the earlier trial, was now convicted as one of the two armed robbers and received 5½ years.

Another man, previously convicted of selling the car to the thieves, was acquitted. The man believed to be the other gunman did not go to trial; he died in a drug overdose last year. The three convicted men were also ordered to pay approximately $264,000 USD (1.6 million kroner) in compensation to the city of Oslo, which owns the paintings.

INTERPOL CRITICISM

Norwegian police have still not revealed the details that led them to the recovery of the two masterpieces — three months after the trial — or to the arrests of the perpetrators. However, numerous stories in the Norwegian daily, *Aftenposten*, plus many other reports suggest that the theft of the paintings was related to another, even more spectacular crime – an armed robbery of a currency center (NOKAS) that resulted in the death of a police officer. It is believed that the theft of the paintings was meant to be a diversionary tactic to draw police attention away from the other theft.

This June, it became known that the Secretary-General of Interpol has criticized Norwegian police, in writing, for withholding important information from Interpol surrounding the theft, the arrests, and the recovery of the works. The Norwegian Police Director defended his actions and said that perhaps his real mistake was in not making it clear that he could not supply the information that Interpol wanted. The public, however, continue to seek more details.

JAPANESE GIFT

On the positive side, it was announced in June that a Japanese company — Idemitsu Petroleum — is donating $670,000 USD to help restore the two Munch paintings. The company has a major operation in Norway, which developed large deposits of oil in the North Sea years ago. As described previously in *IFAR Journal*, both paintings suffered damage during and after the theft. The *Madonna* is torn in several places, including two puncture holes in the left arm, and *The Scream* was also torn and sustained moisture damage and pigment loss as well.

— S. F.

GERMAN ANGST OVER RETURN OF KIRCHNER PAINTING

ALEXANDER PULTE*

The November 8, 2006 evening sale at Christie's in New York made headlines in part for the dizzying prices paid for several paintings that, until recently, had been in European museums and were restituted to heirs of their pre-World War II owners.[1] Included in the group were four paintings by Gustav Klimt returned from Austria to the Bloch-Bauer family. A fifth Klimt returned to the family, the famous gold *Portrait of Adele Bloch-Bauer I*, had already been purchased by Ronald Lauder for the Neue Galerie.

Along with the Klimts was another restituted work, *Berliner Strassenszene (Berlin Street Scene)*, 1913, by Ernst Ludwig Kirchner, formerly in Berlin's Brücke Museum (Fig. 1). It went for a Kirchner record $38 million, also to Mr. Lauder for the Neue Galerie. But the debate in Germany over the July 2006 decision by the Berlin government to restitute that work did not end with the auction sale. Concerns about the claim as well as about the secret negotiations that led to the restitution decision have since resulted in political accusations, a government investigation and a renewed debate in Germany over the rules that should govern the process for the restitution of potential Nazi-looted art.

FIGURE 1. Ernst Ludwig Kirchner. © by Ingeborg & Dr. Wolfgang Henze-Ketterer, Wichtrach/Bern. *Berliner Strassenszene* (*Berlin Street Scene*), 1913. Oil on canvas. Formerly at the Brücke Museum, Berlin, now at the Neue Galerie, New York. Photo: Erich Lessing/Art Resource, NY.

THE HISTORY OF THE PAINTING

The Berlin State Senate restituted *Berliner Strassenszene* to Anita Halpin, the Chairwoman of Britain's Communist Party and heir of the pre-war owners of the painting, Alfred and Thekla Hess, after the history of its Nazi era transfer could not be reconstructed with certainty. Alfred Hess had been a Jewish shoe manufacturer and a leading supporter of German Expressionists in the 1920s until his death in December 1931. His widow, Thekla Hess, transferred part of his collection to Switzerland in 1933, but seven paintings, including *Berliner Strassenszene*, were sent back to Germany in 1936. A Frankfurt collector, Carl Hagemann, bought the painting in 1936–37 purport-

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1 See, e.g., Carol Vogel, "$491 Million Sale at Christie's Shatters Art Auction Record," *The New York Times*, Nov. 9, 2006, p. 1.

"Concerns about the claim as well as about the secret negotiations that led to the restitution decision have since resulted in political accusations, a government investigation, and a renewed debate in Germany over the rules that should govern the process for the restitution of potential Nazi-looted art."

edly for 3,000 Reichsmark. After Hagemann's death in 1940, his widow gave the picture to Ernst Holzinger, director of the Städel Museum in Frankfurt, whose widow, in turn, sold it to the Brücke Museum in Berlin in 1980 for about $1.2 million. In September 2004, Berlin Culture Senator Thomas Flierl, responsible for the state-owned Brücke Museum, was contacted by lawyers on behalf of Ms. Halpin with documentation that Thekla Hess, Halpin's grandmother, was forced by the Gestapo to sell her art collection in 1936.[2]

THE DECISION FOR RESTITUTION

Flierl and Culture Secretary Barbara Kisseler determined that the restitution decision had to be guided by the Principles of the 1998 Washington Conference on Holocaust-Era Assets signed by Germany and 43 other countries. The Principles, concerning art "confiscated by the Nazis and not subsequently restituted," dictated that "steps should be taken expeditiously to achieve a just and fair solution recognizing [that] this may vary according to the facts and circumstances surrounding the specific case." But when the Principles were adopted by Germany (see discussion below), a broader definition of affected art — including art sold at an artificially low price during the Nazi era — was put in place and a more stringent restitution standard set for German museums.[3] Under this standard, the Berlin officials determined that they could not meet the burden of proof to show that Thekla Hess sold the Kirchner of her own free will and that she actually *received* the 3,000 Reichsmarks payment from Carl Hagemann. To huge protests, the city consequently announced on July 27, 2006 that it had decided to restitute the painting to Halpin. As part of the settlement, Halpin was required to compensate Berlin's Brücke Museum for its original purchase price of approximately $1.2 million. Christie's, acting as Halpin's agent, paid the fee, moved the painting to New York in August 2006, and sold it at auction on November 8.

EVIDENCE AGAINST A FORCED SALE

Since the restitution of the painting, critics have provided evidence against the Berlin Senate's decision. A crucial question is whether Thekla Hess sold the Kirchner because she was forced to by the Gestapo or simply because she wanted to raise money. Evidence by the critics suggests that Hess' business was in bad shape by the late 1920s as a result of the world economic depression and that, beginning in 1930, he was forced to sell works from his collection to pay debts.[4] Thekla Hess brought the collection to safety in Switzerland after Hitler's rise to power in 1933, but continued to sell works. The Kirchner was brought back to Germany on her instructions and appears, as noted above, to have been sold in 1936–37 to collector Carl Hagemann for 3,000 Reichsmark. (The receipt for the sale has not been found.) This amount suggests that the sale of the Kirchner by Thekla Hess might not only have been voluntary, but profitable. The world's leading experts on Kirchner, Dr. Wolfgang Henze and his wife Ingeborg Henze-Ketterer, inherited the rights to the Kirchner estate and maintain the Kirchner archive in their own gallery in Switzerland. They reportedly confirmed that the price of 3,000 Reichsmark was the highest price paid for a Kirchner at the time. The Kirchner archive also has a letter in which Kirchner himself expressed his satisfaction with the sale to Hagemann and another letter in which a collec-

[2] Ms. Halpin's legal interests were represented by David J. Rowland of Rowland & Associates in New York and by Peter Schink from Schink & Studzinski in Berlin.

[3] See, e.g., Michael Sontheimer and Andreas Wassermann, "Jewish Heirs Want Their Art Back," *Spiegel Online*, Nov. 8, 2006, available at: http://www.spiegel.de/international/spiegel/0,1518,447136,00.html.

[4] For a summary of the controversial events from the 1930s until the 1950s, see, e.g., Keith Dovkants, "Did this Woman Really Own a £20m Painting?," *Evening Standard*, Nov. 16, 2006, pp. 18–19.

tor comments on the high price. Several art historians, moreover, have pointed out that there was an active network of dealers in 1930s Germany who made it their business to work against the Nazi regime by supporting artists and collectors.

Additional doubt surrounds events in the 1950s. Reportedly, Thekla Hess saw the Kirchner at an exhibition in Lucerne in 1953 and wrote to a dealer in Cologne to say how impressive her late husband's collection looked. She did not say anything about having been forced to part with it. Halpin's lawyers, however, had produced an affidavit signed by Thekla Hess in 1958 in which she stated that she had been coerced under threat by the Gestapo to return to Germany seven pictures that had been sent to Switzerland. Hans Hess reportedly affirmed the Gestapo's threat to his mother in a statement in 1961 and added that his mother had no choice but to sell the works, often at prices below market value, in order to have funds to live. In the 1960s Hans Hess was awarded 75,000 German marks for the loss of the collection — a mere fraction of its worth but the largest amount that could be awarded at the time. Another document dated 1961 turned up recently in which Hans Hess withdrew his 1957 restitution request due to a lack of evidence.[5]

INVESTIGATION INTO THE RESTITUTION DECISION

The restitution decision was criticized in Germany for the secrecy in which it was made and for the lack of an investigation into the facts surrounding the Hess family's sale of the work. For example, the Berlin Senate apparently never consulted Dr. Henze, the acknowledged Kirchner expert, beyond his confirmation that the painting was a genuine Kirchner. Some commentators even wondered whether special "sympathies" contributed to the decision by Flierl, a member of the PDS, formerly East Germany's Communist Party, to restitute the painting to Halpin, who, as already noted, is the chairwoman of Britain's Communist Party.

"A crucial question is whether Thekla Hess sold the Kirchner because she was forced to by the Gestapo or simply because she wanted to raise money."

In February 2007, the Berlin government decided to create a Special Committee (Sonderausschuss) to investigate the background of the restitution decision. A final report is expected by the end of 2007. In addition, the evidence collected since the restitution of the painting has led to an investigation by the public prosecutor's office against Culture Senator Flierl and Culture Secretary Kisseler for breach of public trust (Untreue) and against Anita Halpin for fraud (Betrug).[6] This investigation is examining whether the Berlin representatives were negligent in not having more critically examined the factual basis of the restitution claim.

A published analysis of the legal situation by Berlin judge Friedrich Kiechle in February 2007 reported that Flierl, despite approving the restitution, confirmed that there was no legal requirement to return the painting.[7] The judge concludes that the restitution, in the absence of a legal requirement, was an unnecessary surrender of public property by a public representative and thus illegal under German law. His analysis argues that the restitution law (Rückerstattungsrecht) that applies to former West Germany and the West-sectors of Berlin envisions deadlines for restitution requests. The 1998 Washington Conference did not create new law superceding these deadlines, but rather confirmed a commitment to the creation of binding principles, which, in the case of Germany, went even further than those of the Washington Conference. Those prin-

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5 See, e.g., Gilbert Schomaker, "Rückgabe des Kirchner-Bilds — Interne Vermerke aus der Kulturverwaltung belasten die heutige Chefin der Senatskanzlei, Barbara Kisseler — Kirchner Bild: Juristin warnte Senat," *Berliner Morgenpost*, May 24, 2007, p. 11.

6 See, e.g., Gilbert Schomaker, "Kirchner Gemälde: Wowereit nimmt Staatssekretärin in Schutz," *Berliner Morgenpost*, May 25, 2007, p. 10; Gilbert Schomaker, "Kirchner-Bild: Staatsanwaltschaft ermittelt gegen Erbin," *Berliner Morgenpost*, May 30, 2007, p. 12.

7 Friedrich Kiechle, "Gut gemeint genügt nicht," *Frankfurter Allgemeine Zeitung*, Feb. 7, 2007, p. 35.

ciples, affirmed in a Joint Declaration by the German political institutions in 1999[8] and by the guidelines concerning the implementation of the Joint Declaration in 2001,[9] were not enacted into law, however, and, therefore, his argument continues, did not create new legal rights or obligations. Thus, Kiechle concludes that no law eliminated the statute of limitations of the German restitution law under which the Hess case should have been time barred. And since Berlin was not required to return the painting, the restitution was an illegal transfer of public assets to private parties. His analysis consequently warns that, until the German Parliament creates a proper legal basis applying the principles of the Washington Conference, public officials engaging in restitutions based on their personal judgment might even have to expect criminal proceedings against them.

COUNTER-ARGUMENTS

The Berlin State Senate, for its part, has defended its decision. A brief submitted on its behalf by Dr. Von Trott to the Special Committee on Restitution this June argues that the critics who assert that Germany's Joint Declaration "transcends the scope of the Principles adopted in Washington unnecessarily and for no good reason" are wrong.[10] The Principles, he notes, give federal states and municipalities discretion to go beyond cases of confiscation in their restitution efforts. Moreover, the critics "ignore the Federal Republic's continued obligations under international law arising from the so-called 'Transition Agreement' of 1954, as well as agreements with the three Western Allies in connection with the reunification of Germany . . ."

Most pointedly, he argues that the 2001 Guidelines "include a multi-pronged test for identifying a loss of assets due to Nazi persecution." By this test the Hess losses qualify, even though by 1933 Hans Hess was living abroad and the family received an adequate purchase price for the Kirchner. Under the Guidelines it would have to be shown that they not only received an adequate price, but were "able to freely dispose" of the painting, and also that the sale would "have happened in the absence of the Nazi regime." Drawing on new research commissioned by Halpin, von Trott refutes suggestions that the sale was due to personal economic losses, but that even if that were the case, and even if the Berlin government could have shown that the sale would have transpired without the Nazis, the 2001 Guidelines allow the persecuted person to make a claim if "other facts" indicate a loss of assets due to persecution, and that would be the case for the Hess family.

In June, Halpin's attorneys made public an extensive report they commissioned regarding the restitution[11] — a report prompted, they say, by the "numerous press articles" in which "crucial facts were omitted," "taken out of context," or were otherwise incorrect. Among other points, the report refutes the assertion that the family was in dire financial straits and that Thekla Hess voluntary sent the Kirchner and other paintings back to Germany from Switzerland. The researchers, moreover, could find no documents substantiating the 3,000 RM price and assert that, contrary to other expert opinions (see above), the price, even if it was 3,000, was actually below market.

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8 *Erklärung der Bundesregierung, der Länder und der kommunalen Spitzenverbände zur Auffindung und zur Rückgabe NS-verfolgungsbedingt entzogenen Kulturgutes, insebesondere aus jüdischem Besitz,* 14. Dezember 1999 (Joint Declaration by the Federal Government, the Länder (Federal States) and the National Associations of Local Authorities on the tracing and return of Nazi-confiscated art, especially Jewish property, Dec. 14, 1999).

9 *Handreichung vom Februar 2001 zur Umsetzung der 'Erklärung der Bundesregierung, der Länder und der kommunalen Spitzenverbände zur Auffindung und zur Rückgabe NS-verfolgungsbedingt entzogenen Kulturgutes, insebesondere aus jüdischem Besitz' vom Dezember* 1999 (Guidelines (February 2001) concerning the implementation of the 'Joint Declaration by the Federal Government, the Länder (Federal States) and the National Associations of Local Authorities on the tracing and return of Nazi-confiscated art, especially Jewish property' of December 1999).

10 Statement before the Special Committee on Restitution of the Berlin House of Representatives on June 15, 2007 by Von Trott zu Solz, Lammek, Attorneys at law.

11 Expert Opinion, prepared by Dr. Monika Tatzkow, historian, and Gunnar Schnabel, attorney, commissioned by Anita Halpin, and presented to the Special Committee. For a full text of the report, in English, see: http://www.nazi-looted-art.com/kirchner-restitution. The 74-page report states that Hess financial difficulties arose only in 1933 and were temporary; that the Hess corporations "operated as economically sound enterprises into 1937, the time when their businesses were 'aryanized' by the Nazis."

"The anger in Germany . . . has gone beyond the pain over the loss of one of the country's most prized works of art from a public collection."

ANGER OVER RESTITUTION CLAIMS

The anger in Germany over the restitution of the Kirchner has gone beyond the pain over the loss of one of the country's most prized works of art from a public collection. It has generated fear that Berlin has set a costly precedent for other galleries. According to a December 2006 report in *The Irish Times*,[12] Halpin's lawyers have lodged at least six further restitution claims against German museums for pictures worth over €150 million, including: [13]

- Wilhelm Hack Museum in Ludwigshafen: Ernst Ludwig Kirchner, *Judgment of Paris* (1913).
- Sprengel Museum in Hanover: Franz Marc, *Cat Behind a Tree* (1910/11).
- Staatsgalerie Stuttgart: Franz Marc, *The Little Blue Horse* (1911) and Lyonel Feininger, *Barefoot Church I* (1924).

All of the galleries have begun piecing together documents to establish the provenance of their pictures, often a hopeless task because of records lost during the war. Reportedly, Berlin's Neue Nationalgalerie rejected a claim by Halpin's lawyer for Kirchner's *Potsdamer Platz* after the museum produced a photograph showing that the work was already in its possession in 1931, long before Nazi persecution.[14] In 2004, the Hanover Museum was asked to return a Franz Marc watercolor, but it turned out that it had been sold by Alfred Hess's son at auction in 1954. Similarly, Erfurt's Angermuseum was confronted with the demand for a posthumous portrait of Alfred Hess that Anita Halpin had sold to the museum in 1992 herself. Other museums report similar claims, giving rise to a sense that Halpin may have embarked on a "fishing expedition."

This process has resulted in a feeling in Germany that art restitution claims can be driven more by commercial interests than by the legitimate interests of heirs. Reportedly, a Berlin source close to the negotiations over Kirchner's *Berliner Strassenszene* said that Halpin was offered €15 million for the picture to remain in Berlin but that her lawyer refused the offer.

POTENTIAL CHANGES IN GERMANY'S RESTITUTION APPROACH

Discussions began in the German parliament in October 2006 about possible changes to the restitution process.[15] One proposal reportedly requires a ten-year holding period before restituted works can be sold at auction while another envisions establishing a list of artworks of national importance that cannot be sold outside the country. In November 2006, leading curators, lawyers and art dealers met with the federal cultural minister for a high-level meeting in the Chancellery in Berlin. The Berlin government's Special Committee, created in February 2007 to investigate the background of the restitution, is still hearing testimony from parties involved in the decision and independent experts. It also intends to examine fundamental problems of provenance research and set up criteria for the future treatment of restitution claims by the end of 2007. Meanwhile, some German newspapers have reported that Mr. Lauder has initiated a conversation with Berlin representatives regarding a potential loan of *Berliner Strassenszene* so that the painting could return in some manner to the Brücke Museum.[16]

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12 "Traders of Lost Art," *Irish Times*, Dec. 19, 2006, p. 12.

13 Ms. Halpin's attorneys would neither confirm nor deny to IFAR the specific other restitution claims, nor any other assertions made in the press.

14 See, e.g., Angella Johnson, " £100m Secret of Woman they call 'Stalin's Granny'," *The Mail on Sunday*, Nov. 19, 2006, p. 46.

15 See, e.g, Heinrich Wefing & Rose-Maria Gropp, "Expertenrunde berät über Umgang mit Raubkunst," *Frankfurter Allgemeine Zeitung*, Nov. 21, 2006.

16 See, e.g., Rolf Lautenschläger, "'Strassenszene' wird Chefsache," *Die Tageszeitung*, June 13, 2007, p. 24.

EXPERT OPINIONS AND LIABILITIES – AN IFAR UPDATE

JUDITH BRESLER*

EDITOR'S NOTE:
In its continuing interest in issues of attribution, authenticity, and liability of experts when rendering opinions, IFAR invited attorney Judith Bresler to update her three previous IFAR articles on this subject. (See IFAR Journal, Vol. 6, no. 4, 2003/04; Vol. 2, no. 3, 2000; and IFARreports, October 1987.) The following article, as did its predecessors, focuses on recent case law.

It is hardly news that fakes, forgeries, and works of doubtful provenance, including World War II plunder, continue to proliferate in the United States art market. In addition, a number of antiquities and other artifacts, amid evolving judicial interpretation of the National Stolen Property Act, have been repatriated in recent years in the glare of the media. Accordingly, expert opinions become a crucial instrument in serving to rid the market of unwanted material. More than ever, museums and other institutions, increasingly diligent in accessioning works of art, as well as collectors, dealers, gallerists, and auction houses, look to the art historian and to the *droit moral*[1] holder for a given artist to authenticate art, and look to the art appraiser to affix a monetary value. For a number of decades now, the rendering of such expert opinions by these and other art specialists (collectively, "art experts") has become big business.

". . . Aggrieved parties often seek recourse through other theories of liability – notably, in recent years, fraud. As is seen in two of the following cases, however, fraud's legal requisites generally defeat the litigious plaintiff. Collectors, stand warned."

Every few years, the *IFAR Journal* presents an updated overview of some of the more common tort liabilities that can be incurred by an expert in the rendering of opinions about art — including, at times, how the expert can limit his or her legal exposure. Art experts have been sued, over the years, in disparagement, defamation, negligence, negligent misrepresentation, and on various theories of fraud. Case law, to date, has made it clear that experts are most vulnerable to

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[1] Where an artist is deceased, the holder of the decedent-artist's droit moral (in nations recognizing the *droit moral* and a post-mortem application of such rights) is generally regarded as an authenticator of the artist's work.

liability in suits of negligence. Accordingly, the law has developed an arsenal of generally effective preventative measures for the expert, most neatly embodied in a contract to render an opinion.[2] Possibly because such a contract, when well-drafted, serves to insulate experts against exposure in negligence, aggrieved parties often seek recourse through other theories of liability — notably, in recent years, fraud. As is seen in two of the following cases, however, fraud's legal requisites generally defeat the litigious plaintiff. Collectors, stand warned.

Additionally, when the art expert who renders an opinion in good faith is bullied and harassed by way of frivolous lawsuits where, for example, the plaintiff is not pleased with the expert's opinion, the expert can seek and obtain significant financial redress from the law by initiating a lawsuit of his own — on a theory of malicious prosecution. This article concludes with the case of one such expert's triumph.

FRAUD

Krahmer v. Christie's[3]

This recent lawsuit, decided in 2006 and affirmed in April 2007, is based on events that go back twenty years. In 1986, Jay Cantor, then head of Christie's American Paintings department, met with directors of the Detroit Club to discuss the consignment and sale of several paintings. Among the works selected for consignment was an oil painting entitled *Interior*, purportedly painted by American artist Frank Weston Benson (1862–1951) in 1912, depicting a young woman in the half light standing beside a table (Fig. 1).

In researching the provenance of *Interior*, Cantor had learned that the Club had acquired the painting directly from Benson in 1914 and that it had been independently appraised as a Benson piece at least three times between 1925 and 1985.

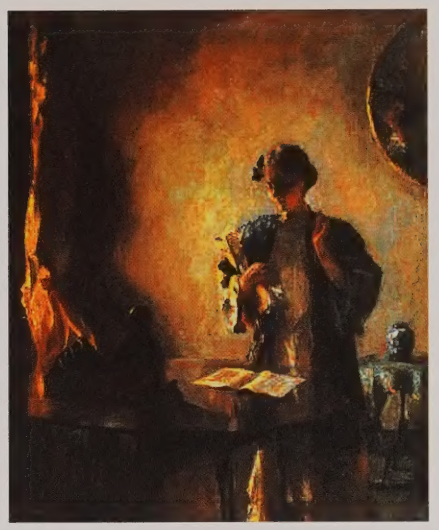

FIGURE 1. ***Interior.*** **Oil on canvas, 30.1" x 25.2", date uncertain. Formerly attributed to Frank Weston Benson and the subject of a lawsuit, *Krahmer v. Christie's.***

When *Interior* arrived at Christie's, its specialists examined the painting, including its style, subject matter, color palette and signature. They also examined the frame, which Cantor believed was period.

> **"The court found that Christie's belief that *Interior* was an authentic Benson work was grounded in good-faith."**

Satisfied that the work was by Benson, Christie's, in May of that year, offered *Interior* for auction with an estimate of $70,000 to $90,000 and a reserve price of $55,000, describing the painting's provenance as a "midwestern club." When the painting failed to sell, Christie's, at the behest of the Club, re-listed it in December 1986, this time with estimates of $40,000 to $60,000 and a reserve of $35,000.

Interior sold in the December auction to Johannes and Betty Krahmer. The auction catalogue governing the sale of the painting conspicuously stated that its sale was accompanied by a six-year limited warranty of authenticity. Although Christie's removed its representation as to the painting's provenance from the December catalogue, the Krahmers received a name-

[2] Such a contract, to limit exposure to negligence claims, was discussed in a previous article: J. Bresler, "Expert Opinions and Liabilities — An IFAR Update," *IFAR Journal*, Vol. 6, no. 4, 2003-04, p. 28.

[3] *Johannes R. Krahmer and Betty P. Krahmer v. Christie's, Inc.*, C.A. No. 606-N, Court of Chancery of Delaware, New Castle, October 17, 2006, LEXIS #186, *aff'd* No. 594, Lexis 177 (Del. Apr. 25, 2007).

plate from Christie's following their purchase which showed that the painting had belonged to the Detroit Club of Michigan.

After the sale, Cantor congratulated the Krahmers on their acquisition and offered to provide an appraisal for insurance purposes. On March 2, 1987, Christie's provided an insurance appraisal of *Interior* and listed the Krahmers' purchase price, $38,500, as the valuation. In 1990 Cantor visited the Krahmers' house and, in addition to valuing other works of art owned by the couple, raised the appraised value of *Interior* to $85,000.

In November 1999, while attempting to authenticate the painting, the Krahmers applied to the Catalogue Raisonné Committee for F. W. Benson located at the Vose Galleries in Boston. The Committee was formed in 1991. While the application was pending, the Krahmers learned of a painting housed at the New Britain (Connecticut) Art Museum strikingly similar to *Interior.* When the Krahmers brought this to the Committee's attention, they were told that Benson may have painted two works depicting the same scene.

In the spring of 2002, the Krahmers tried to sell *Interior* through Sotheby's auction house. A restorer for Sotheby's, Simon Parke, examined the painting and opined that it might be a forgery. In Parke's words:

> *. . . the picture seems to have been broadly retouched in a very clumsy fashion . . . . I am sure the signature is not period, and it seems to be on top of a lot more varnish and repaint.* [4]

Accordingly, Sotheby's declined to accept the painting. The Krahmers, now suspicious that *Interior* might not be an authentic Benson, informed Christie's of Sotheby's rejection of their painting, and the parties agreed to have the Committee determine whether it was a forgery.

The Committee concluded that *Interior* was not Benson's work and noted that the painting in the New Britain Museum was more consistent with Benson's style. Further, the Committee found documentary evidence showing that the figure in Benson's original painting wore a string of pearls, which was evident in the New Britain painting and absent in the Krahmers' work.

The Committee theorized that the original painting was sold to the Detroit Club and then somehow removed from its frame and replaced by the forgery that the Krahmers eventually purchased — and that the original Benson, after being removed from its frame at the Detroit Club, came into the hands of an art dealer in 1973 who, in turn, sold it to the New Britain Museum.

Upon receiving the Committee's report, the Krahmers asked Christie's to rescind the 1986 sale. Christie's refused, reasoning that the six-year warranty of authenticity on the painting had expired years earlier. In July 2004, the Krahmers brought suit for rescission on a theory of fraud, and Christie's moved for dismissal on summary judgment.

To support their claim, the Krahmers alleged that Christie's fraudulently induced them to believe that the painting they had purchased in December 1986 was an authentic Benson by intentionally misrepresenting the painting's authenticity and subsequently appraising the painting at more than twice the amount of the Krahmers' purchase price. According to the Krahmers, Christie's knowingly or recklessly disregarded flaws in *Interior*'s provenance while guaranteeing its authenticity in a contrived effort to lull them into a false sense of security with regard to their purchase. The Krahmers additionally argued that Christie's conveyance of the nameplate and the auction house's subsequent appraisals of the work served to fraudulently conceal *Interior*'s lack of authenticity, thereby tolling the three-year statute of limitations.[5]

[4] Id. at LEXIS, p. 8, fn. 10.

[5] The parties agreed that New York law applies to the substantive claims in this litigation, while Delaware law applies with respect to the statute of limitations issue — *Id.* at LEXIS, p. 14, fn. 19.

(Under a claim of fraudulent concealment, if established, the statute of limitations governing a cause of action can be suspended to enable an otherwise time-barred action to proceed, as the defendant would have knowingly acted to prevent the plaintiff from discovering his rights.)

Christie's, on its part, argued that the Krahmers' claim was mere conjecture in that it lacked an evidentiary basis for their theory of fraud. Christie's also noted the due diligence it had performed on the painting prior to the auction, which uncovered nothing to question its authenticity. Therefore, Christie's asserted, it lacked the necessary scienter (that is, guilty knowledge) required to establish fraud. At most, Christie's argued, the Krahmers could show negligence, a theory of liability not pleaded in the petition.[6] Finally, Christie's asserted that the Krahmers could not support a theory of tolling of the statute of limitations based on fraudulent concealment as the Krahmers were on notice as far back as 1999 that the painting might not be an original Benson.

The Delaware court, holding for Christie's, dismissed the case on summary judgment for two reasons discussed below. First, even if the painting were a forgery, the Krahmers failed to provide evidence from which the court might reasonably infer scienter on Christie's part. Second, the Krahmers could not establish tolling of the statute of limitations based on the theory of fraudulent concealment.

Lack of Scienter. As the court observed, to establish a claim of fraud, a plaintiff must prove reliance upon and injury by a false representation of a material fact made by the defendant. Additionally, the plaintiff must show the presence of scienter, an element that requires the misrepresentation to be knowingly untrue or recklessly made. But if the evidence establishes that the defendant genuinely believed in the truth of the representation in question, then the scienter necessary to sustain a claim of fraud is not present.

". . . If a plaintiff is able to establish the occurrence of fraudulent concealment, the statute of limitations governing a cause of action can be tolled, that is, suspended, to allow an otherwise time-barred action to proceed."

Here, the court found that Christie's belief that *Interior* was an authentic Benson work was grounded in good-faith. As the court noted, at the time of the painting's consignment, its provenance was solid and well-documented; when Christie's inspected the painting prior to the sale, the style and subject matter were deemed typical of Benson's other work; the painting's frame was consistent with frames of Benson's period. Moreover, the court observed that no evidence was presented that was inconsistent with Christie's good-faith belief in the authenticity of *Interior* at the time of the sale from which the court could reasonably infer the presence of scienter needed to prove fraud.

Fraud Claim Not Timely. As noted by the court, even if evidence would support a finding of fraud on the part of Christie's in the sale of *Interior* to the Krahmers, and even if Christie's subsequent acts *were* designed to prevent the Krahmers from realizing that they purchased a forged painting, the Krahmers' claim would still be barred by the statute of limitations.

A statute of limitations, as the court stated, is calculated from the time of the wrongful act — even if the plaintiff is unaware of the cause of action. In this case, the Krahmers' cause of action accrued on the date they purchased *Interior*, December 5, 1986, relying on Christie's alleged misrepresentation of the painting's authenticity. As the court noted, Delaware's applicable three-year statute of limitations expired on December 5, 1989. However, as the court further observed, if a plaintiff is able to establish the occurrence of fraudu-

[6] In January 2006, the Krahmers unsuccessfully sought to amend their petition to include, *inter alia*, a claim of negligent misrepresentation which the court subsequently rejected in the absence of a showing of a special relationship of trust and confidence between Christie's and the Krahmers.

lent concealment, the statute of limitations governing a cause of action can be tolled, that is, suspended, to allow an otherwise time-barred action to proceed. As noted earlier and as the court observed here, to prevail on the ground of fraudulent concealment, a plaintiff must establish that the defendant acted knowingly to prevent the plaintiff from discovering his rights.[7]

Mere silence, as the court noted, is not sufficient to establish fraudulent concealment. What is required, to toll the running of the limitations period, is an affirmative act on the part of the defendant. Moreover, even where fraudulent concealment is found to exist, the limitations period is suspended only until the plaintiff's rights are discovered or, through reasonable diligence, could have been discovered.

"The court noted that a reasonably diligent person, upon learning of the existence of a strikingly similar painting hanging in a museum, would have investigated his own painting's *bona fides* immediately thereafter."

Here, according to the court, the Krahmers identify several acts by Christie's which allegedly diverted them from inquiry as to *Interior*'s lack of authenticity: namely, Cantor's congratulatory reaction to their purchase, his immediate offer to provide an insurance appraisal, and his conveyance of the nameplate following the sale. The Krahmers also argued that Cantor's 1990 appraisal at their house was an overt effort by Christie's to lull them into a false sense of security regarding *Interior*'s legitimacy.

The court, however, found these allegations to be without merit. It noted that the evidence supports Cantor's assertion that the nameplate was removed to prevent any embarrassment to the Club in connection with the sale of *Interior* to fund capital improvements and that Cantor's congratulations and offer of an insurance appraisal were merely indicative of customer-oriented business practices. Moreover, as the court observed, Cantor's 1990 appraisal of *Interior* along with the Krahmers' other artworks in the Krahmers' residence, conducted at no cost and after the expiration of the three-year limitations period, suggested nothing more than a desire to maintain good business relations with the Krahmers.

Finally, as the court concluded, even if Cantor's actions as cited by the Krahmers did in fact constitute fraudulent concealment, the Krahmers' claim was still time-barred. The Krahmers were on notice at the latest by 1999 that their painting might be a forgery. The court noted that a reasonably diligent person, upon learning of the existence of a strikingly similar painting hanging in a museum, would have investigated his own painting's *bona fides* immediately thereafter. Instead, the Krahmers took no substantive action until 2002 when they attempted to consign their work to Sotheby's. Accordingly, the court found that the Krahmers' 2004 petition was filed well beyond the mandated three-year limitations period.

Fastov v. Christie's[8]

As with the *Krahmer* litigation, the seeds for the *Fastov* lawsuit were sown in the 1980's. Here, the plaintiff Robert Fastov, an attorney who formerly worked as a litigator for the United States Government, resigned his position with the government in the mid-1980's and began working full time as an art dealer in Annapolis, Maryland. In 1985, Fastov purchased the painting in issue, a landscape entitled *Schloss Thalwitz* (Fig. 2), for $600 from an antiques dealer in Pennsylvania. At the time of the purchase, the painting was covered with a dark yellow varnish. Recognizing that the painting could have significantly more value than his purchase price, Fastov cleaned the painting, whereupon the name "Schindler" was revealed on the canvas. Fastov researched the name and concluded

[7] *Id.* at LEXIS p. 21.

[8] *Robert S. Fastov v. Christie's, Inc.*, U.S.D.C., District of Columbia, Case 1:97-cv-00578, February 22, 2006.

FIGURE 2. ***Schloss Thalwitz.*** **Oil on panel, 27.2" X 20.7". Believed to be by Emil Jacob Schindler. The subject of a lawsuit,** ***Fastov v. Christie's.***

that the artist was most likely Emil Jakob Schindler (1842-1892), a nineteenth-century Austrian painter.

To confirm his conclusion about the artist's identity, Fastov sought the opinion of Dr. Gerbert Frodl, then director of nineteenth century art at the Belvedere, the Austrian Gallery in Vienna. In his letter to Frodl, which was accompanied by black-and-white photographs of the painting, including close-ups of the signature, Fastov asked not only for an opinion regarding the painting's authenticity but also for information about the location depicted in the painting. Frodl responded to Fastov's inquiry in pertinent part as follows:

> *Thank you very much for your kind letter . . . . It would be necessary to know the original, but I believe I can say this much: that I, like you, believe that the painting is of Schindler's hand . . . . However, as we know, between a photo, even if it is very good, and the originals there is a difference.*[9]

[9] *Id.* at 3-4.

"Frodl, recognizing the image from Fastov's earlier inquiry, indicated that he could not render an opinion as to the painting's authenticity without actually viewing the original. In view of Frodl's response, Christie's determined not to offer the painting in its May sale . . ."

In 1989, Fastov consigned the painting to Sotheby's in New York for an autumn sale. Sotheby's listed the painting in its catalogue with presale estimates of $50,000 to $70,000 and assigned a reserve price to the painting of $50,000. Fastov had provided Sotheby's with the Frodl letter, but no reference to the letter was made in the auction catalogue. The painting failed to sell at auction and was thereafter returned to Fastov. Early in 1993, Fastov proposed to consign to Christie's in London the Schindler landscape along with three other paintings for a May sale. Christie's provided Fastov with an estimated sale price of £40,000 to £60,000 pounds subject to actual inspection of the painting. In March 1993, Fastov shipped the painting to Christie's London at his own expense. Christie's receipt for the painting, which was subsequently sent to Fastov, signed by him, and returned to Christie's, bore "Conditions of Business" that included the following:

> (a) Christie's shall have absolute discretion as to:
> (i) whether the lot is suitable for sale by Christie's, and, if so, as to the place and date of sale, the conditions of sale and the manner in which such sale is conducted;
> (ii) the description of any lot in the catalogue;
> (iii) whether the views of any expert shall be obtained. . . .
>
> (b) Christie's reserves the right to withdraw any property at any time before the actual sale if, in Christie's sole judgment:

(i) there is any doubt as to its attribution or to its authenticity.[10]

Although Christie's London, upon receipt and examination of the painting, believed that it was an authentic Schindler, it nonetheless sought an expert opinion on the painting's authenticity, in consonance with its usual practice, because the painting lacked a documented provenance. To that end, it forwarded transparencies of the painting to the head of its Vienna office who, in turn, forwarded them to Frodl. Frodl, recognizing the image from Fastov's earlier inquiry, indicated that he could not render an opinion as to the painting's authenticity without actually viewing the original. In view of Frodl's response, Christie's determined not to offer the painting in its May sale, and the painting was, accordingly, not included in the auction catalogue.

When Christie's informed Fastov that his painting would not be offered in the May sale because Frodl could not commit to an opinion and offered to ship Fastov's painting (at Fastov's expense) to Frodl for examination, Fastov, upset, refused the offer. Rather, he contacted Dr. Heinrich Fuchs, author of a published compilation of Schindler's paintings, and forwarded transparencies of his painting to him. In June 1993, Fuchs provided Fastov with a certificate of authenticity for the painting. That November, Fastov again contacted Christie's London to inform the auction house about Fuch's certificate, but Christie's refused to offer the painting for sale without first obtaining a positive opinion from Frodl. Thereafter, Fastov made no effort to sell the painting elsewhere but, rather, continued to badger Frodl for a positive opinion and Christie's to sell the painting as a genuine Schindler.

In January 1994, Fastov sent Frodl a lengthy, accusatory letter threatening legal action against him if Frodl failed to provide Fastov with either a certificate of authenticity or a detailed rationale for his disagreement with Fuchs. In March 1994 Frodl, offended by Fastov's letter, replied that he was unable to render any opinion on the basis of photographs; that he had never called the painting a falsification; and that he had not given Christie's *any* opinion, binding or otherwise, as to the painting's authenticity. Frodl concluded his letter by advising Fastov that he (Frodl) was not available to Fastov to render an opinion.

On or about late June 1994, Fastov sent Christie's London an even lengthier letter with hundreds of pages of attachments — alleging negligence and misrepresentation on the part of Christie's and explaining that unless Christie's agreed to his settlement proposal of $168,000, he was prepared to sue Christie's for compensatory damages in excess of $265,000 and punitive damages in excess of $1 million.

In July 1994, Christie's, by letter, reiterated to Fastov that it had been unwilling to sell the painting because Frodl had been unwilling to commit to an opinion on the basis of photographs. The letter denied all of Fastov's allegations of negligence and misrepresentation and reminded Fastov that he (Fastov) had declined to forward his picture to Vienna for a physical inspection.

In October 1997, [11] Fastov filed an eight-count complaint against Christie's in the District of Columbia federal district court, and substantial and costly discovery followed. Fastov's complaint, arising from Christie's 1993 decision not to auction Fastov's painting, included, among other theories of liability, one each for breach of oral contract, negligent misrepresentation, fraudulent misrepresentation, fraud in the inducement, breach of fiduciary duty and negligence.[12] In addition to claiming punitive damages, Fastov's complaint sought damages for the alleged diminished value of his painting, for the time and effort he expended in pursuing his claims against Christie's, and for the emotional distress and health problems he

[10] *Id.* at 5-6.

[11] Fastov originally filed a massive complaint against Christie's in March 1997 — nearly four years after Christie's declined to include Fastov's painting in its May 1993 auction — and Christie's moved to dismiss the complaint, arguing, *inter alia*, that the complaint failed to comply with Rule 8(a) of the federal Rules of Civil Procedure. The court granted to motion with leave for Fastov to re-plead. *Id.* at 12.

[12] The two other claims, not addressed here, were intentional infliction of emotional distress and violation of the District of Columbia's consumer protection statute. *Id* at 13.

sustained, allegedly caused by Christie's actions.

Christie's, for its part, asserted that all of Fastov's claims were barred by the District of Columbia's[13] three-year statute of limitations, which applies to both tort and contract claims.

In Count VI of his complaint, Fastov alleged that:

(1) he entered into an oral consignment agreement with Christie's in which Christie's agreed not to consult with an outside expert to confirm the painting's authenticity;
(2) in approaching Frodl to obtain such an opinion, and then subsequently withdrawing the painting from the May 1993 catalogue and sale, Christie's breached the agreement;
(3) under the agreement, Christie's had an implied obligation to Fastov of good faith and fair dealing which included the use of best efforts to promote Fastov's painting and to protect Fastov's interests; and
(4) Christie's breached its obligation of good faith and fair dealing by:
   a) consulting with Frodl without seeking Fastov's permission, and:
   b) failing to use its best efforts to protect the market value of Fastov's painting and obtaining the highest sales price for the painting.

The court found that these alleged breaches occurred on or before May 20, 1993 and that, therefore, the limitations period began to run on Fastov's breach of contract claim no later than May 20, 1993. Accordingly, when Fastov filed his breach of contract claim on March 21, 1997, the three-year limitations period had long since expired, rendering Fastov's contract claim untimely.[14]

The court held Fastov's tort claims to be equally untimely. As the court observed, basically all of Fastov's tort claims were premised on his allegations that Christie's:

(1) falsely informed Fastov it would not seek the advice of an outside expert regarding the Schindler's authenticity;
(2) falsely advised Fastov it was unnecessary to consult an outside expert because Christie's itself believed the Schindler painting was authentic;
(3) falsely informed Fastov that Frodl had submitted a negative opinion regarding the painting's authenticity;
(4) falsely advised Fastov that it withdrew the painting from auction based on Frodl's negative opinion;
(5) falsely informed Fastov that Frodl would put his "non-existent negative opinion" in writing if Fastov confronted Frodl;
6) falsely informed Fastov that the painting would sell for a price in excess of £70,000; and
(7) falsely informed Fastov that Frodl could not offer a positive opinion on authenticity as a result of Fastov's failure or unwillingness to ship the painting to Vienna for inspection.

The court found that Fastov either knew or, with the exercise of reasonable diligence, should have known that he suffered injury resulting from Christie's alleged tortuous conduct more than three years before he filed suit.

Moreover, the court held that even if Fastov's claims were timely, they would fail on the merits. As the court observed, to succeed with each of his causes of action, Fastov had to demonstrate that he suffered damages as a result of Christie's conduct, and the court found that Fastov made no such showing. That is, the court noted that Fastov's painting was in no way physically damaged by Christie's; that Christie's decision not to offer the painting for sale at auction was made private-

[13] The parties agreed to submit to the law of the District of Columbia.

[14] The court observed that Fastov unsuccessfully relied on the discovery rule for suspending the statute of limitations. Under the discovery rule recognized in the District of Columbia, where a breach of contract or obligation is difficult to discover, the statute of limitations does not begin to run until the injured party should have known of the breach. Here, the court found no basis for application of the discovery rule because to the extent, if any, that the alleged oral agreement existed, Fastov, as a supposedly sophisticated litigator who would know how to investigate matters affecting his affairs, knew or reasonably should have known about any alleged breach of that agreement considerably more than three years before he filed suit.

ly and without notice to the public; and that although Frodl declined to render an opinion on authenticity based on photographs of the painting, Fastov did receive a certificate from Fuchs certifying that the painting was a genuine Schindler.

Although Fastov did not contend that Christie's publicly impugned his painting, he suggested that Christie's "effectively killed the painting's market value as an authentic work" [15] as it would be unethical for him to sell the painting without revealing the existence of Christie's and Frodl's doubts about its authenticity. The court, however, found Fastov's suggestion to be groundless, noting that in 1994 — long before he filed suit for damages — Fastov had received written confirmation from both Frodl and Christie's that his painting had not been impugned. Accordingly, the court found that Fastov had no basis whatsoever for thinking that he could not sell the painting without revealing that Frodl and/or Christie's purportedly and secretly questioned the painting's authenticity. The case was dismissed on summary judgment.

MALICIOUS PROSECUTION

Seltzer v. Morton, Gibson, Dunn & Crutcher, LLP, and Gladwell [16]

In this Montana case, an art expert harassed by a disappointed owner to recant his negative opinion about a painting, sued the owner — and his attorneys — for malicious prosecution, and won. In late 2000 or early 2001, at the request of an art auction house, the plaintiff Steve Seltzer, a professional appraiser and authenticator of Western American artwork, rendered an opinion as to the authenticity of a watercolor painting owned by defendant Steve Morton. Morton's painting, *Lassoing a Longhorn* (Fig. 3), dated 1913, bore a signature indicating that it was the work of Charles M. Russell (1864–1926), a renowned Western American artist. Seltzer, however, along with some other experts, believed the work was actually by Seltzer's grandfather, Olaf Carl Seltzer (1877–1957), a contemporary and protégé of Russell, whose works, though respected, were less known and significantly less valuable than those of Russell's.

FIGURE 3. ***Lassoing a Longhorn*** **(aka "Roping the Longhorn"), watercolor purchased as a work by Charles M. Russell and reattributed to Olaf Seltzer.**

There were stylistic differences between the two artists. Although both lived and produced Western art in Montana, notably cowboy scenes, beginning in the late 1890's, Seltzer's work often manifested a more subtle use of color and more distinct lines and detail than did Russell's work, which generally presented a more vivid use of color.

As to the painting in issue, its origin and whereabouts prior to 1939 is unknown. In November 1939, the Newhouse Galleries in New York sold the painting to the Amon Carter Museum of Fort Worth Texas. In February 1972, the Museum sold the painting to the Kennedy Galleries of New York. In May 1972, the defendant Morton purchased the painting from the Kennedy Galleries for $38,000. Other than obtaining verbal assurance from the Galleries, Morton neither requested nor obtained any independent verification that the painting was an authentic Russell.

In 1998 Morton initiated a series of discussions with the Coeur d'Alene Art Auction house in Idaho with the objective of selling his painting at an annual Western art auction conducted by the house. In August 2000, at Morton's request, the director of the auction house appraised the fair market value of Morton's

[15] *Supra*, note 1 at 22.

[16] *Seltzer v. Morton et al.*, No. 05-378, Supreme Court of Montana, 2007 MT 62; LEXIS # 98, March 12, 2007.

"Other than obtaining verbal assurance from the Galleries, Morton neither requested nor obtained any independent verification that the painting was an authentic Russell."

painting as $650,000 on the assumption that the painting was an authentic Russell, and Morton subsequently decided to proceed with the sale of the painting by way of auction. However, the auction house then consulted with the plaintiff Seltzer before attempting to sell the painting as an authentic Russell.

The plaintiff, aside from being the world's foremost expert on the works of O.C. Seltzer and, to a lesser extent, an expert on the works of Russell, is a professional authenticator and appraiser of Western artwork. When Seltzer, familiar with the painting in issue, was contacted by the Coeur d'Alene auction house, he expressed his opinion that it was a work of O.C. Seltzer. Seltzer's opinion was seconded by Ginger Renner, a Russell expert in her own right and the widow of the noted Russell expert, Frederic G. Renner. She was also to a lesser extent an expert on O.C. Seltzer. Additionally, she opined that the signature on the painting had been altered in some manner.[17]

Given the expert opinions of both Seltzer and Ginger Renner, the Coeur d'Alene advised Morton in January 2001 that the auction house would not attempt to sell the painting as an authentic Russell because apparently it was the work of O.C. Seltzer. Morton subsequently received letters from each of Seltzer and Ginger Renner confirming their determinations that the painting was the work of O.C. Seltzer.

Thereafter, despite Morton's admitted knowledge that his painting was not an authentic Russell, he twice attempted to sell it as a Russell. First, in June 2001, he requested that the Kennedy Galleries sell it as a Russell on his behalf. When the Galleries refused to do so, he attempted to consign the painting for sale through Christie's auction house in Los Angeles. Christie's refused to accept the consignment and returned the painting to Morton.

Thereafter, Morton retained the defendant Dennis Gladwell, a partner with the defendant law firm Gibson, Dunn & Crutcher (GDC), who in April 2002 demanded from each of Seltzer and Ginger Renner a letter of "withdrawal of opinion" and threatened litigation if each failed to draft such a letter.

When neither expert responded, Morton sued Seltzer in July 2002 in the Montana federal district court asserting, among other claims, (1) Defamation, "by knowingly publishing false statements 'with an intent to damage [Morton]' and 'with the intent to defame the painting and [Morton's] reputation for honesty and fair dealing'"; [18] and (2) Negligence, by recklessly or carelessly "challenging the authenticity and provenance of the painting" and by "refusing to recant or withdraw his statements when presented with evidence that the signature on the painting was not forged." [19] Morton sought, among other remedies, (1) Declaratory judgment that the painting was an authentic Russell; (2) An injunction barring Seltzer from publicly asserting that the painting was not an authentic Russell; and (3) General damages, Special damages and Punitive damages.

Seltzer retained counsel and filed affidavits of ten individuals who had expertise regarding the works of both Russell and O.C. Seltzer. Each of these affidavits expressed the opinion that the painting was not an authentic Russell. Shortly thereafter, Morton and his attorneys admitted in a letter to the Kennedy Galleries that they had not as of yet secured a top-notch expert who could testify with confidence that the painting was an authentic Russell and that unless they could secure such an expert shortly, the lawsuit could go no further. [20]

[17] *Id.* at Lexis p. 14.

[18] *Id.* at Lexis p. 29.

[19] *Id.*

[20] *Id.* at Lexis p. 32.

"The outcome of Seltzer should imbue the expert with confidence that the law will underwrite an expert's integrity . . ."

In February 2003, the Montana federal district court dismissed the case against Seltzer on summary judgment. In defending himself against this lawsuit, Seltzer had incurred more than $45,000 in legal fees. Seltzer subsequently sued Morton, his attorney, Gladwell, and the law firm, GDC, alleging malicious prosecution and abuse of process. The jury found in favor of Seltzer on both his asserted causes of action, awarding $1.1 million in compensatory damages. As to punitive damages, the jury awarded damages of $100,000 against Morton, $150,000 against Gladwell and $20 million against GDC.

The Montana federal district court then issued an order reviewing the punitive damages verdicts pursuant to Montana statutory law and federal case law. The court determined that while the punitive verdicts were not excessive under Montana law, the verdict against GDC did not comport with due process under federal jurisprudence and was therefore reduced to $9.9 million.

Seltzer then filed an appeal with the Montana State Supreme Court, after which the defendants filed a cross-appeal. The Montana State Supreme Court affirmed the federal district court's holdings in all respects. Therefore Seltzer, the not-so-hapless-expert, was well-compensated for rendering services under extremely trying circumstances; moreover, he was awarded millions of dollars for being subjected to harassment by both the owner of an artwork and the owner's attorneys. The outcome of *Seltzer* should imbue the expert with confidence that the law will underwrite an expert's integrity — and that the law cannot be wielded like a blunt instrument to coerce the expert into rendering an advantageous though erroneous opinion for a client.

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LOOKING AT ART: THE CONSERVATOR'S VIEW

JOYCE HILL STONER*

EDITOR'S NOTE: *With this issue IFAR introduces a new Journal feature — "Looking at Art" — answers and insights from the experts — conservators, connoisseurs, scholars — to a range of questions about caring for and understanding works of art.*

QUESTION:

What is "inpainting"? How might it affect authenticity/authorship?

ANSWER:

I'll start with part one of your question. We refer to retouching done by well-trained and up-to-date conservators as "inpainting" to emphasize that we apply our retouching paints only within the losses and do not overlap onto the artist's original paint. Past practitioners may have "repainted" or "overpainted" entire areas of the background of a painting, disguising details or portions of figures or costumes. The lower section of one seventeenth-century Italian painting we treated in our conservation program at Winterthur, for example, had been overpainted, apparently to "censor" an offending snake on a depiction of Cleopatra and to convert the composition into a penitent Magdalene.

According to the current Code of Ethics and Guidelines for Practice of the American Institute for Conservation of Historic & Artistic Works, inpainting should be readily removable, or "reversible" in solvents that will not harm the original paint and will not falsely modify the appearance of the original work. In other words, if the artist painted in oil paint, we inpaint with synthetic paints readily removable in toluene, xylene, or petroleum benzine, such as acrylic or other synthetic paint media. If the artist painted in acrylic paints, we would inpaint in watercolor or other readily water-soluble media such as Aquazol. We hope that our inpainting will not discolor rapidly, but if it does, the next conservator can readily remove it and replace it without endangering the artist's original surfaces. A nineteenth-century portrait I inpainted about twenty years ago was brought back to me because the parents of the current owners had been such heavy smokers that my acrylic inpainting had selectively absorbed nicotine, even through the final saturating and protective varnish, and had stained a deep brown. I could readily remove the previous

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FIGURE 1 A & B. F. Hüpsch, *Portrait of John Kohler*, detail. Oil on canvas,1866. Private Collection. Treated by Winterthur/UD Program in Art Conservation students. Photos by Brian Baade. 1A, on the left, shows the portrait in normal light; 1B shows it in ultra-violet light.

inpainting and varnish with xylene and replace them with better inpainting and varnish materials we now have available.

It is also part of our Code that we should be educated regarding the methods and materials that, to the best of current knowledge, will not adversely affect the painting we are treating. We also need enough art history to know the unique character and significance of a work as we make decisions about how far to inpaint. Washington Allston (1779–1843), an American painter known as "the American Titian," tried to imitate the translucent effect of Old Master glazes by multiple interlayering of varnish and thin paint films and also a final coating of what he called "Titian's dirt," a mixture of asphaltum, Indian red, ultramarine, and megilp. Unaware of Allston's unusual technique, the first restorers who cleaned his paintings may have misinterpreted the intentionally toned surfaces. This could have resulted in the removal of readily soluble glazes and "Titian's dirt," significantly changing the appearance of the painting. Allston himself, in 1839, on seeing his heavily glazed *Diana in the Chase* (1805), after a lapse of 24 years and a cleaning, disclaimed authorship of his work. If confronted with a greatly or even slightly overcleaned Allston, the educated conservator may (with careful observation of other mint-condition Allston paintings and consultation with the curator or owner) precisely knit together the shattered glazes as much as possible. This inpainting can, again, be easily removed by a future conservator who may feel that it went too far.

> **"The degree to which a painting should be inpainted has historically been debated, sometimes quite heatedly. Most high-profile paintings have been cleaned and inpainted at least once a generation . . .**

We must document all of our work, creating permanent records and reports, so that it is clear what the painting looked like before we carried out the inpainting. In addition to consulting the records, the next owner or prospective buyer can easily examine the work using long-wave ultra-violet light (see Figs. 1A and 1B) to see how much of the work has been inpainted.

FIGURE 2. Rembrandt Harmensz. Van Rijn, *Study of an Elderly Woman in a White Cap*. Oil on panel, c.1640. Reattributed to Rembrandt after overpainting was removed. Photo: Sotheby's.

(Of course there is the problem that some nefarious persons might cover inpainting with an ultra-violet inhibiting varnish, but the inpainting can then be detected with infra-red reflectography, which will reveal the white fills below, or through x-radiography, which will reveal the original losses through their different densities.)

INPAINTING AND AUTHENTICITY

Authorship, authenticity, and related issues have already been briefly addressed in the case of Washington Allston, above. The artist himself denied authorship when he felt his Diana had been over-cleaned and probably had not been appropriately retouched; however, a skilled and sympathetic conservator, well schooled in the visual appearance of mint-condition Allston paintings, might (arguably) be able to return the painting to a more authentic appearance by careful inpainting. Wholesale overpainting of skinned areas would, of course, reduce the visual authenticity of a work.

Recent headlines discussed a Rembrandt/not Rembrandt painting of an older woman that had been overpainted enough so that its authorship had been disputed (Fig. 2).[1] Once cleaned, documented in the cleaned state, and skillfully inpainted by a conservator well versed in Rembrandt's technique, the painting was accepted as a Rembrandt by scholar Ernst van de Wetering.

The degree to which a painting should be inpainted has historically been debated, sometimes quite heatedly. Most high-profile paintings have been cleaned and inpainted at least once a generation and have endured a history of inpainting approaches, some more ethical and sympathetic than others. Another Rembrandt, *Anatomy Lesson of Dr. Nicholaes Tulp* (The Hague, Mauritshuis), has had at least twenty-three documented treatments carried out by more than fifteen different restorers from 1700 to 1996; the most recent by the current conservators at the Mauritshuis. It is extremely unusual to have documentation of treatments before the second half of the twentieth century, but it can widen our window of understanding of past activity.

Restorers used to have no compunctions about freely repainting the paintings undergoing treatment. Renaissance terms included the Italian verb "acconciare," which may mean adjustment or even adorning. "Refreshed" and "refurbished" were sometimes used as terms, and "restaurare" in the 16th century might have meant entirely overpainting. Thus we use the term "inpainting" to indicate our conscious boundaries and scruples and respect for the original or authentic.

In the middle of the twentieth century, the pendulum had swung far enough away from a taste for

[1] The painting had been accepted as a Rembrandt in the 19th and early 20th centuries, but was later de-attributed. Among other alterations to the original work, the white collar of the woman had been overpainted with a brown fur collar, which troubled some scholars. With the new Rembrandt attribution, the work was sold as a Rembrandt at auction at Sotheby's, New York, January 26, 2006.

total repainting to cause some curators to request no inpainting at all. Some Italian "primitives" (possibly being partly punished through the pejorative nature of that term) were exhibited as "honest wrecks" with deep losses in the wood, gesso, and paint films, converting them into archaeological fragments. Is this "authentic" or highly misleading regarding the original intention of the artist? I vote the latter.

Other schools of thought, such as the Italian teachings of "tratteggio" (fine, tiny vertical lines of watercolor applied elegantly on gesso fills) suggested that inpainting be distinguishable at close observation but harmonious and essentially invisible from a distance (sometimes referred to as the "6 foot/ 6 inches" approach). When beautifully done, this approach can be quite satisfying for both authenticity and authorship, in that large sections of flood-damaged drapery on the Virgin's robe in Pietro Lorenzetti's *Enthroned Virgin and Child* can be suggested and understood from a normal viewing distance, but no examiner would mistake the retouching for the actual work of Lorenzetti (treatment by Terry Lignelli at the Philadelphia Museum of Art).

By the end of the twentieth century, most museum curators and collectors internationally seemed to prefer indistinguishable retouching, and even in Italy most of the recent conservation work has been done as skillful "invisible" inpainting. The discussion in conservation professional meetings has moved away from "how far to inpaint" to investigations of even better materials that will remain removable, can be applied in translucent layers, and are least likely to fade or discolor.

So, does inpainting impact on authenticity/authorship? To answer almost any question about their work, most conservators will begin with "it depends." And *this* answer? It depends on all of the issues discussed above. If precisely and sympathetically done with intimate knowledge of the techniques of the original artist, inpainting should assist with determining or recognizing the authenticity and authorship. If not, the truth may be obscured with something more than "Titians' dirt."

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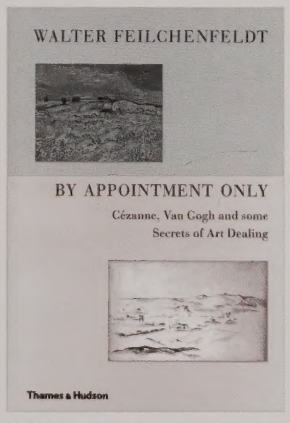

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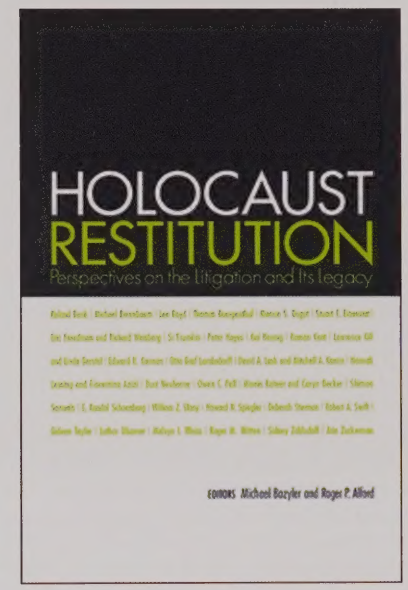
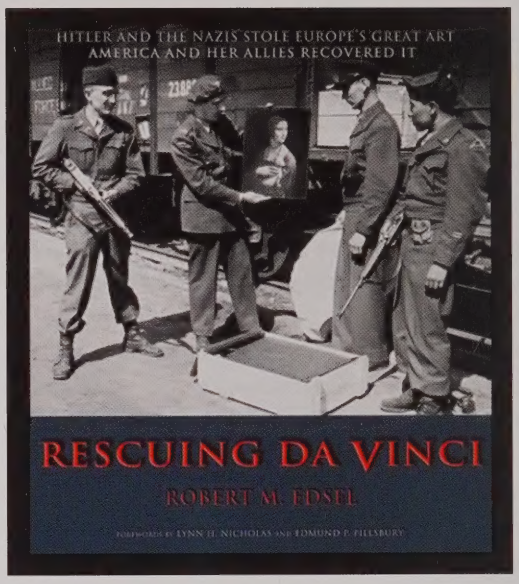
Kelly Devine Thomas, ARTnews, Summer 2006

MORE BOOKS ON WORLD WAR II'S LEGACY IN ART AND LAW

LUCILLE ROUSSIN*





Holocaust Restitution: Perspectives on the Litigation and Its Legacy

Michael Bazyler and Roger P. Alford, Eds.
New York University Press, 2006.
374 pp., hardcover, $49.
(Also available in paperback.)
ISBN 0814799434

Rescuing Da Vinci

Robert M. Edsel
Laurel Publishing, LLC, Dallas, TX, 2006.
302 pp., hardcover $55.
ISBN 0977434907

Rescuing Da Vinci and *Holocaust Restitution* are welcome additions to the burgeoning literature about the plunder and human rights violations that took place during WWII and are still at issue. The two books are very different in purpose and presentation, but both will be an asset in expanding our knowledge of the events of the Holocaust, their aftermath and the ongoing efforts to right the wrongs that were done insofar as that is even imaginable.

* Lucille Roussin, Ph.D., J.D., is founder and director of the Holocaust Restitution Claims Practicum at the Benjamin N. Cardozo School of Law in New York City, where she teaches a seminar, Remedies for Wartime Confiscation. She also teaches a course on "Art, the Law and Professional Ethics" at the School of Graduate Studies at the Fashion Institute of Technology.

HOLOCAUST RESTITUTION

Holocaust Restitution, edited by Michael Bazyler and Roger P. Alford, professors at Whittier Law School and Pepperdine University School of Law respectively, is essentially a sequel to Bazyler's *Holocaust Justice: The Fight for Restitution in America's Courts* (New York University Press, 2003). The new book is arranged thematically into six parts: Overview; Bank Litigation; Slave Labor Litigation; Insurance Litigation; Looted Art; and The Litigation's Legacy. Only one part specifically deals with art cases, but it includes some of the most publicized art law suits of recent years. A very welcome addition to the information in the book is the website www.holocaustlitigation.com, where those seeking additional information can access the relevant documents, reports and cases that are mentioned in the book. There is not space in this review to discuss each of the contributions in depth, so I will highlight a few of the essays that deal with some of the more contentious issues.

The authors of the thirty-one essays are all major players in what the editors aptly call "the drama of Holocaust restitution," (p. 5) and include lawyers for plaintiffs and defendants, judges, diplomats, historians, corporate defendants, representatives of the major Jewish organizations and Holocaust survivors. The essays also present very different points of view. For example, Eric Freedman and Richard Weisberg's chapter, "The French Holocaust-Era Claims Process" (pp. 133-144), lauds the outcome of the French Bank litigation through the Franco-American Washington Accords as "a momentous victory"; whereas, Shimon Samuels, head of the Paris office of the Simon Wiesenthal Center, concludes *his* essay, "The French Bank Holocaust Settlement," by stating, "The story of the French bank settlement ends without apology and with a very qualified measure of justice" (p. 151).

Among the settlements most criticized in the book is that of the Holocaust-era insurance claims. For decades, survivors and their heirs had been rebuffed by the insurance companies for lack of death certificates and other documentation. As described by Lawrence Kill and Linda Gerstel in their essay, "Holocaust-Era Insurance Claims" (p. 241), the creation of the International Commission for Holocaust-Era Insurance Claims (ICHEIC) was intended to avoid litigation and provide a fast track for resolving claims, in part by instituting relaxed levels of evidentiary proof. Much to the consternation of both the claimants and the class action lawyers, ICHEIC proved costly and ineffective.[1] Membership in ICHEIC was voluntary, and there was little effective enforcement of claims. All claims against German insurance companies were ultimately folded into the German Foundation Settlement. Judge Michael Mukasey's decision in *In Re: Assicurazioni Generali S.p.A. Holocaust Insurance Litigation*, 340 F.Supp2d 494 (S.D.N.Y. 2004), in which the case was dismissed on grounds that State law claims seeking redress for unpaid Holocaust insurance claims were preempted by the exercise of primacy in the sphere of foreign affairs by the Executive Branch, seemingly ended all the insurance claims because the time to submit claims to ICHEIC had passed. However, in a very recent decision, Judge George B. Daniels extended the time to file claims against Generali until June 30, 2008 based on the recent decision to open the extensive WWII archives at Bad Arolsen, Germany.[2]

"The authors of the thirty-one essays are all major players in what the editors aptly call 'the drama of Holocaust restitution' . . ."

The issue of art looted during the Holocaust is the issue that most often occupies the news headlines, in part because the restitution of looted art involves deep issues of family history and in part because of the monetary value of the looted art. Because each work of art is unique, each case must be resolved on a case-by-case basis. The three essays in the section on looted art address the past, the present and the future of art restitution. An essay by Monica Dugot, former Deputy Director of the Holocaust Claims Processing Office and currently Senior Vice President, Director of Restitution at Christie's, relates, among other successes, the success of the Holocaust Claims Processing Office in restituting several works to the Littman family,

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1 See Sidney Zabludoff's essay in the same section (pp. 260-267), "ICHEIC: *Excellent Concept but Inept Implementation.*"

2 In *Re: Assicurazioni Generali S.p.A. Holocaust Insurance Litigation*, 2007 U.S. Dist. LEXIS 13360 (S.D.N.Y., Feb. 27, 2007); David Stout, "After Resisting for Decades, Germany Agrees to Open Archive of Holocaust Documents," *The New York Times*, April 19, 2006, p. A1.

and the *Madonna and Child in a Landscape* by Lucas Cranach the Elder to the heirs of Philipp von Gomperz. Howard Spiegler writes of an ongoing case, *U.S. v. Portrait of Wally*, a painting by Egon Schiele, and E. Randol Schoenberg relates his experiences in the restitution of five extraordinary paintings by Gustav Klimt to the heirs of Adele Bloch-Bauer, the only Holocaust-era looted art case to go all the way to the Supreme Court of the United States.[3]

The two contributions by Holocaust survivors present us with contrasting perspectives. Si Frumkin, liberated from Dachau at the age of 14 — twenty days after his father was murdered there — expresses his anger and frustration at the evidentiary requirements of the insurance "settlement" and the "legal peace" negotiated between the U.S. government and Germany (pp. 92-100). Roman Kent, also a survivor of the ghetto and a concentration camp, finds some solace in his participation in the German Foundation Settlement, noting that "tens of thousands of survivors received a small form of justice, imperfect as it was, toward the end of their lives" (p. 214).

Editors Bazyler and Alford are to be congratulated on assembling such a varied and informative selection of essays by leading figures in the Holocaust restitution efforts. My only regret is that an important and ongoing case and potential settlement, *Garb v. Republic of Poland*,[4] a case for restitution of, or reparations for, Jewish property in Poland seized by the Nazis, and *Freund, et al. v. Republic of France, Société Nationale Des Chemins De Fer Français, Caisse Des Dépots Et Consignations*[5] — are not discussed.

[3] *Republic of Austria v. Altmann*, 541 U.S. 677, 124 S.Ct. 2240 (2004). For more about this case, see, among others, *IFAR Journal*, Vol. 9, no. 1, pp. 28–44.

[4] 207 F.Supp2d 16 (E.D.N.Y. 2002); 440 F3d 579 (2d Cir 2006).

[5] Civil Action No. 06 CV 1637 (S.D.N.Y.)

RESCUING DA VINCI

Stunning may seem an unusual word to use in a book review, but it is the most appropriate word for Robert M. Edsel's book, *Rescuing Da Vinci*. Mr. Edsel, a retired Texas oilman, was inspired, when living in Florence in the late 1990's, by Lynn Nicholas's award-winning book, *The Rape of Europa*, about the plunder of art during WWII. So inspired was he that he sought out Lynn Nicholas, and thus began a journey that has not ended with the publication of his book. Indeed, Mr. Edsel became the co-producer of the documentary film, "The Rape of Europa," released late in 2006 and already the recipient of many awards.

"Stunning may seem an unusual word to use in a book review, but it is the most appropriate word for Robert M. Edsel's book, *Rescuing Da Vinci.*"

Rescuing Da Vinci is lavishly illustrated with hundreds of photographs — primarily black and white period photographs, but some color — scoured from archives and private collections all over the world, many of which have never been seen before. Several well chosen photographs in The Prologue, for example, illustrate the surrender of France to Germany in June 1940. For the ceremony, Hitler located the exact Pullman railcar in which the Treaty of Versailles, by which Germany surrendered in World War I, was signed (Fig. 1). The text itself here, as elsewhere in the book, is spare, but to the point.

Chapter 1, "Setting the Stage," records Hitler's rise to power and the removal by the German government of 16,000 works of art deemed "degenerate" from German museums, many of which were exhibited in Munich at the famous "Degenerate Art" exhibition in 1937 and, subsequently, in the 1939 auction at the Galerie Fischer in Lucerne. Chapter 2, "Preparations," records the removal into storage of works of art in the British Museum, the Louvre, the Rijksmuseum, and the Hermitage, and the construction of brick shelters

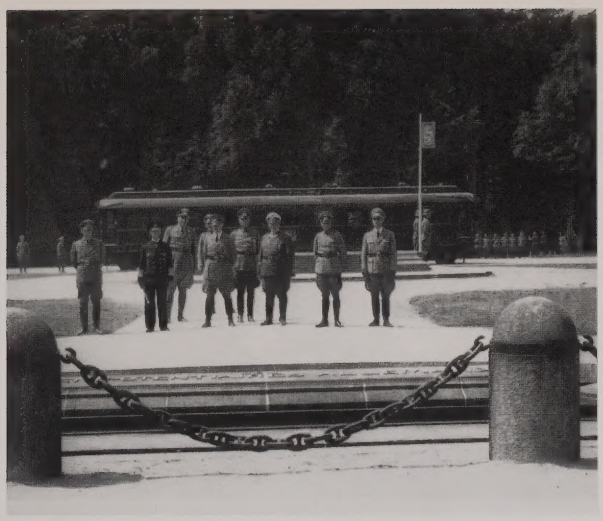

FIGURE 1. ***Compiègne*, France, June 21, 1940. One of hundreds of archival photographs from *Rescuing Da Vinci*. Standing in front of the historic railcar are (left to right): Von Ribbentrop, Raeder, Brueckner, Hitler, Keitel, Göring, Von Brauchitsch, and Hess. Photo: National Archives and Records Administration, College Park, MD.**

for Italy's famous sculptures and monuments that were not removable. Not well known is the removal of 75 masterpieces from the National Gallery in Washington, D.C. to the Biltmore estate in Asheville, N.C., also illustrated here. Chapter 4, "Theft by Any Other Name," records with graphic photos the plunder of art and even household items — including children's toys — by the Einsatzstab Reichsleiter Rosenberg ("ERR"), a special art looting Nazi unit headed by Alfred Rosenberg.

Chapters 5 through 8 tell the story of the most massive recovery of stolen art in history. In these chapters we see Edsel's passion — the establishment of the Monuments, Fine Arts and Archives (MFAA) program under the auspices of the American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas, more widely known as the Roberts Commission. The role of the MFAA has never been widely told, even though many of the Monuments Men went on to become directors of America's best museums and faculty at the most renowned Art History departments in our colleges and universities.[6] Indeed, on p. 129, Edsel lists "Select Leaders of Post-War American Institutions — All Former Monuments Men." It includes: James Rorimer, Director of the Metropolitan Museum; Craig Hugh Smyth, Director of Villa I Tatti, Harvard University, and Professor at the Institute of Fine Arts; Lincoln Kirstein, Founder and President of the New York City Ballet; S. Lane Faison, Director of the Williams College Museum of Art; and Sherman Lee, Director of the Cleveland Museum of Art. Monuments Men is, however, a bit of a misnomer, since many women also served in this capacity, some of whom are listed on the updated list of MFAA personnel on p. 141 compiled by Edsel and his research team. Here, too, the story is enriched with photographs (pp. 142–48).

In Chapters 6, 7 and 8 ("Treasure Found," "Collecting Points," and "Homeward Bound"), the text and illustrations of the recovered artworks, shown in black and white as recovered and some in color as currently exhibited, will surprise even the most knowledgeable provenance researcher. Chapter 9, "Casualties of War," reminds us all of the works of architecture and painting that are forever lost to us, including works by Giovanni Bellini, Caravaggio, and Rubens. Edsel's Epilogue highlights one of the most famous paintings still missing, Raphael's *Portrait of a Young Man* (1516), formerly in the Czartoryski Collection in Poland.

This extraordinary book concludes on a high note:

> "Gradually many of these missing artworks will surface, and in time find their way home. . . . Finally, discoveries will occur; some will be major news stories. Someday, a major work of art, such as the missing Raphael from Cracow or one or more of the Amber Panels, will either surface, or the way it met its demise will become known. Each

[6] Mr. Edsel's efforts to gain Congressional recognition for the MFAA came to fruition in spring 2007. For more information see www.rescuingdavinci.com.

"In these chapters we see Edsel's passion – the establishment of the Monuments, Fine Arts and Archives (MFAA) program . . . . The role of the MFAA has never been widely told, even though many of the Monuments Men went on to become directors of America's best museums and faculty at the most renowned Art History departments . . ."

such event will steer greater attention to other missing works. For those in possession of the missing artwork or knowledge of its whereabouts, pressure to come forward will increase. Twenty-five years from now it will be fair to assume that most of the remaining missing pieces were, in fact, destroyed. But what an interesting twenty-five years lies in wait" (p. 286).

We can only hope that Mr. Edsel is right. His words echo those of Ardelia Hall, former MFAA officer and director of the Office of International Information and Cultural Affairs of the State Department, who wrote in 1951: "[f]or the first time in history, restitution may be expected to continue for as long as works of art known to have been plundered during a war continue to be discovered."[7]

Rescuing Da Vinci is a most valuable and pioneering work on the efforts of the MFAA to seek and restitute the thousands of art treasures stolen during World War II. We should look forward to Mr. Edsel's further contributions to this subject.

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[7] *Department of State Bulletin*, August 27, 1951, pp. 337-45, 339.

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STILL MISSING

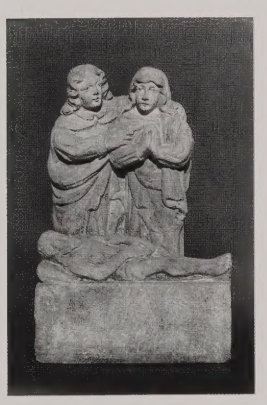
The Following Items Stolen in 1986 and 1990 in Palm Springs, CA and Published Most Recently in *IFAR Journal*, Vol. 5, no. 2, 2002, are Still Missing:

WORKS ON PAPER

Pier Francesco Fiorentino, Attrib. to (Italian, flourished 1470–1500), *Sketch of a Young Man*. Ochre-colored crayon. *86.172.1 (*IFARreports*, June 1986, no. 434.).

Pablo Picasso (Spanish, 1881–1973). *Horse and Rider*, 1957. Gouache, 61.0 x 50.8 cm. Signed l/l; dated u/r. *86.172.2 (*IFARreports*, June 1986, no. 679).

SCULPTURE



John the Baptist and the Virgin Mary Interring Christ (German, 15th century). Stone. Sculpted by a German master from the Rhine region. *90.123.1 (*IFARreports*, June 1986, no. 286).

Johannes Nadirainer (German, 19th century), *A Tired Man*. Bronze. Signed: "Joh. Nadirainer"; inscribed on the base: "Molded by H. Schabel. Dengg, Tegernsee." *90.123.2 (*IFARreports*, June 1986, no. 287).

Peter Makolies (German, b. 1936), *Judith*. Terracotta, 35.6 x 39.4 cm. Signed. *90.123.3. (*IFARreports*, June 1986, no. 288).

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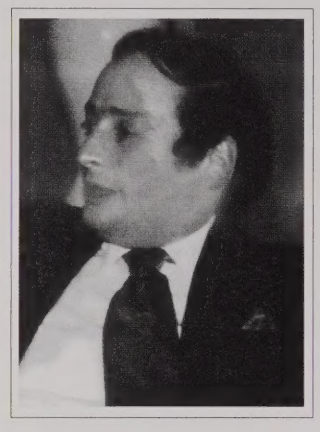

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COMMISSIONER, PARKS, RECRATION
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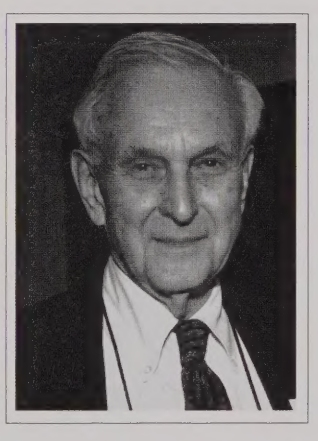

CRAIG HUGH SMYTH
1915–2006
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DIRECTOR EMERITUS, HARVARD UNIVERSITY CENTER FOR ITALIAN
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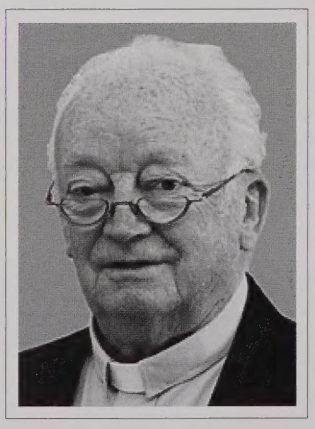

HARRIE VANDERSTAPPEN
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SCHOLAR, CONNOISSEUR

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CIVILIZATIONS, UNIVERSITY OF CHICAGO;
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1986-2007

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The Stolen Art Alert, published by IFAR since 1977, is now produced in cooperation with the Art Loss Register (ALR), the art community, insurance companies, police, the FBI, and Interpol. The information in each entry is supplied by the owner and/or insurance companies to the ALR, police, the FBI, Interpol, and others, and IFAR does not accept responsibility for, nor make any representations with respect to, accuracy or authenticity.

Most items in this publication are registered in the database of the Art Loss Register, with its New York office at 108 West 39th Street, Suite 506, New York, NY 10018 and its London office at First Floor, 63–66 Hatton Garden, London EC1N 8LE.

The photo of each item is accompanied by a brief description of the work, the ALR catalogue number, if registered, and the date and place of theft. An asterisk before the catalogue number means that a photograph of the stolen work is available, although not necessarily included in this issue.

Anyone wishing additional information should contact the ALR at 212.297.0941.

STOLEN ART

PAINTINGS

73 **IVAN POKITONOV** (Belgian, 1851–1923). Stolen in Dinant, Belgium between September 3 and September 8, 2006. Interpol no. 20061018293.

74 **GUY CARLETON HIGGINS** (American, 1883–1962). ***St. Patrick's***, 1934. 72" x 15". Stolen from a private residence in New York, NY on April 20, 2006. Interpol no. 20060814269.

75 **UNATTRIBUTED.** ***Guardian Angel.*** Oil on canvas. 165 x 110 cm. One of five paintings stolen from the chapel at Chicani, La Paz, Bolivia on January 15, 2006. Interpol no. 20060509083.

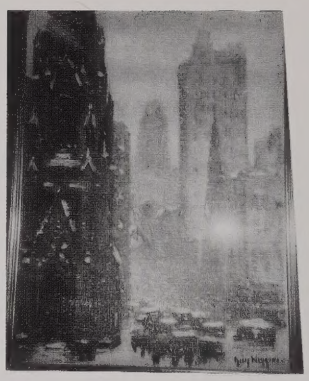
76 **ZIFFER SANDOR** (Hungarian, 1880–1962). ***Trees on the Sasar Riverside***, 1944. Oil on canvas. 70 x 100 cm. Stolen from a private residence in Baia Mare, Romania on July 10, 2006. Interpol no. 20060713949.

77 **ALBERT LEBOURG** (French, 1849–1928). ***Ornans***, 1899. Oil on canvas. 19 7/8" x 29 3/4". Signed l/r: Albert Lebourg, Ornans 1899. *N06.169. Stolen from a private residence in Los Angeles, CA on August 23, 2006.

78 **SIR ALFRED MUNNINGS** (English, 1878–1959). ***A Feast of Fat Things***, or ***Feeding Time***, 1906. 20 1/2" x 30 1/2". Signed and dated l/l. *N06.203. Stolen from a private residence in Maplewood, NJ on August 15, 2004.

79 **SAMUEL JOHN PEPLOE** (Scottish, 1871–1935). ***Tulips and Oranges***, c.1924–25. Oil on canvas. 24" x 20". Signed and dated. *N06.224. Stolen from a private residence in Palm Beach, FL between November 2003 and May 2004. See also item nos. 96 and 97 below.

73



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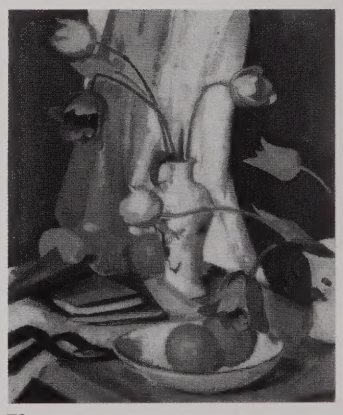

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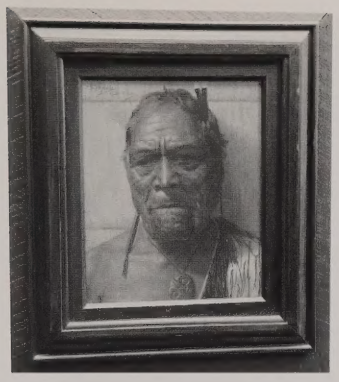
* Numbering for the year 2007 Cumulative Index of Stolen Art began with the last issue, Vol. 9, no. 1.



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80 CHARLES FREDERICK GOLDIE (New Zealander, 1870–1947). ***Planning Revenge, Portrait of Hore Te Ruinga Pokai***, 1921. Oil on canvas. Signed and dated u/l. *N07.001. Stolen from a university in Auckland, New Zealand on December 21, 2006.

81 ERNEST LAWSON (Canadian/American, 1873–1939). ***Fall Scene***, c.1920s. Oil on canvas mounted on board. 16" x 18". Signed l/r: E. Lawson. *N07.041. Reported by a private collector as stolen in transit between Minnesota and New York on July 7, 1984.

82

83

82 GRANVILLE REDMOND (American, 1871–1935). ***Seascape at Twilight***. Oil on Masonite. 16" x 20". Signed l/l. *N07.047. Stolen from a gallery in Los Angeles, CA sometime between July 22, 2006 and February 22, 2007.

83 SCHOOL OF CUZCO (Peruvian, 18th century). ***Virgin Immaculata***, c.1725. *N07.061. Stolen from a church in Omaha, NE on March 16, 2007.

84

85

84 SIDNEY STARR (English, 1857–1925). ***Le Repos***, 1886. Oil on panel. 33 x 23 cm. Signed and dated l/l. *L06.464. Stolen from a gallery in Buckinghamshire, England on August 24, 2006.

85 PAUL MELLIA (British, 20th–21st century). ***Maleficent***. Oil (?) on canvas. 119 x 119 cm. *L06.505. Stolen from a gallery in London, England on September 1, 2006.

*The following two paintings by Pablo Picasso (Spanish, 1881-1973) were stolen, along with item no. 118 below, from the Paris, France home of Diana Widmaier-Picasso, Picasso's granddaughter, on February 26–27, 2007. *L07.112:*

86 ***Portrait of Jacqueline.*** Oil on canvas. Dated u/r: February 11, 1961. (Zervos XIX:425) This is a portrait of Picasso's second wife, Jacqueline Roque.

87 ***Maya with a Doll.*** See color photo on inside back cover.

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*The following eight paintings, bequeathed to the N.P. Goulandris Foundation-Museum of Cycladic Art as part of the estate of the late Elisabeth Godley, were among numerous items stolen from her apartment in Athens, Greece sometime between August 1 and November 21, 2006. *N07.059:*

88 VASSILIOS GERMENIS (Greek, 1896–1966). ***Landscape with Woman.*** See color photo on inside back cover.

89 CONSTANTINOS VOLANAKIS (Greek, 1837–1907). ***Disembarkation.*** Oil on canvas. 58 x 43 cm. Signed l/l.

90 APOSTOLOS GERALIS (Greek, 1886–1983). ***Maiden at the Window.*** Oil on canvas.

91 APOSTOLOS GERALIS (Greek, 1886–1983). ***Waiting.*** Oil on panel. 55 x 45 cm. Signed l/l.

92 APOSTOLIS GERALIS (Greek, 1886–1983). ***Portrait of an Old Man.*** Oil on canvas.

93 I. ALTAMOURAS (Greek, 1852–1878) ***Maritime Landscape.*** Oil on canvas.

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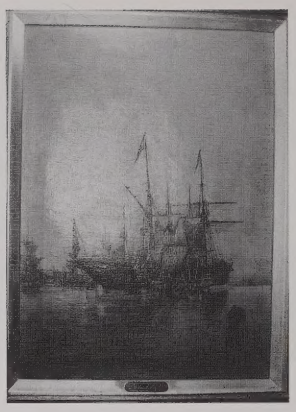

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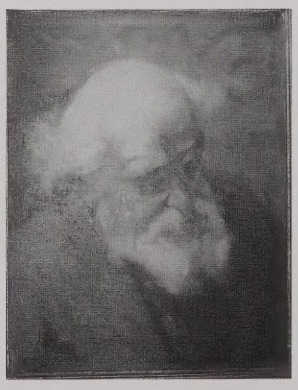

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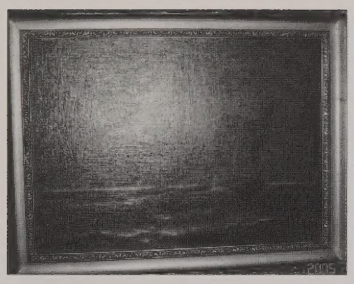

94

95

94 **S. PROSALENTIS** (Greek). ***Maritime Landscape at Night.*** Oil on canvas.

95 **S. PROSALENTIS** ***Maritime Landscape at Night.*** Oil on canvas.

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*The following two paintings were stolen from a private residence in Maplewood, NJ sometime between November 2003 and May 2004. *N06.224. See also item 79 above:*

96

96 **GUSTAVE LOISEAU** (French, 1865–1935). ***Paysage à Porte Joie.*** Oil on canvas. 21¼" x 25⅕". Signed.

97 **EUGÈNE BOUDIN** (French, 1824–1898). ***Trouville, les jetées, marée basse.*** See color photo on inside back cover.

The following four paintings (Peruvian, 18th century) were among numerous items reported stolen from the Church of Santa Ana de Maca, Arequipa, Peru in October 2006.

98

98 ***St. Thomas Aquinas.*** Oil on canvas. 104.5 cm x 78 cm.

99

99 ***The Four Apostles and the Eucharist.*** Oil on canvas. 118 cm x 84 cm.

100

100 ***Saint Gregory.*** Oil on canvas. 104 x 79 cm.

101

101 ***Virgin of Sorrows.*** Oil on canvas. 90 x 66 cm.

The following 5 paintings were among 35 items stolen during a violent burglary in which a murder was committed at a residence in Paris, France in September 2006. Police have since recovered the other 29 paintings and 1 tapestry that were stolen. Interpol no. 20060916992.

102 **CORNEILLE DE LYON** (Dutch/French, 1500–1575). ***Portrait of a Woman with a Headdress.*** See color photo on inside back cover.

103 **SIMON DE VLIEGER** (Dutch, 1600–1653). ***Storm at Sea with Sailboats.*** Oil on panel. 56.5 cm x 82.5 cm.

104 **JAN CORNELISZ VERSPRONCK** (Dutch, 1597–1662). *Portrait of a Woman in a White Ruff and Headdress.* Oil on panel. 71 cm x 64 cm.

105 **UNATTRIBUTED.** ***Landscape with Village in Ruins.***

106 **UNATTRIBUTED.** ***Country Village.***

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*The following seven paintings were stolen from a private residence in Waterloo, Belgium on September 30, 2006. *L06.478. Interpol no. 20061018429.*

107 **FRANÇOIS GALL** (French, 1912–1987). ***Eugenie at Her Vanity,*** 1956. Oil on canvas. 27 x 22 cm.

108 **IVAN POKITONOV** (Belgian, 1851–1923). ***Quay à Liège.*** Oil on panel. 19 x 27 cm.

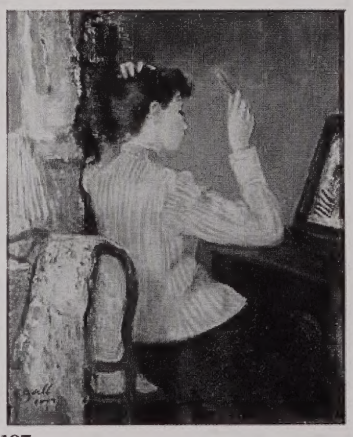
109 **IVAN POKITONOV** (Belgian, 1851–1923). ***Snowy Woods.*** Oil on panel. 19 x 25 cm.

103

104

105

106



107

108

109

110

111

110 **EUGÈNE BOUDIN** (French, 1824–1898). ***Le Havre, Le Port***, 1882. Oil on panel. 27 x 35 cm.

111 **ALFRED STEVENS** (Belgian, 1823–1906). ***Monte Carlo.*** Oil on panel. 11 x 18 cm.

112 **GEORGE MORREN** (Belgian, 1868–1941). ***Roman Gardens, Cap Ferrat***, c.1890. Oil on canvas. 44 x 44 cm.

113 **RIK WOUTERS** (Belgian, 1882–1916). ***Woman in Red Dress with Amber Necklace***, 1912. Oil on canvas. 79 x 71 cm.

---

*The following four paintings were stolen from a private residence in Mexico on November 21, 2003. *N07.029. See also item no. 120 below:*

112

113

114 **MARC CHAGALL** (Russian/French, 1887–1985). ***La Branche de Citron.*** Oil on canvas. 66 x 79 cm. Signed l/r.

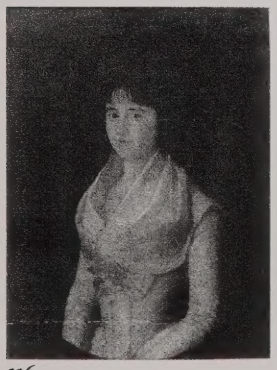
115 **DIEGO RIVERA** (Mexican, 1886–1957). ***Still Life.*** Oil on canvas. 66 x 79 cm.

116 **FRANCISCO GOYA** (Spanish, 1746–1828). ***Portrait of a Woman.*** Oil on canvas. 72 x 56 cm.

117 **AMEDEO MODIGLIANI** (Italian, 1884–1920). ***Girl in Blue.*** Oil on canvas. 58 x 49 cm. Signed u/r.

114

115



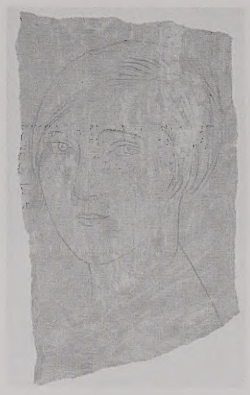
116

117

STOLEN ART

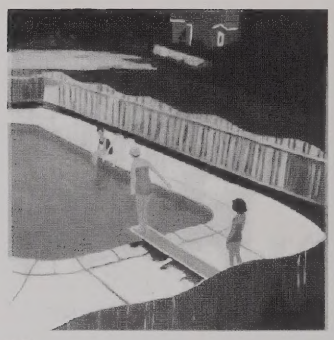
WORKS ON PAPER

118 **PABLO PICASSO** (Spanish, 1881–1973). ***Marie Thérèse at 21.*** Lead pencil drawing and collage on paper. 19" x 12". *L07.112. Stolen, along with item nos. 86 and 87 above, from the Paris, France home of Diana Widmaier-Picasso, Picasso's granddaughter, on February 26–27, 2007.



118

119 **ISCA GREENFIELD-SANDERS** (American, b.1978). ***Yellow Suit Diver,*** 2006. Watercolor. 8" x 8". Signed l/r. *N06.208. Stolen from a New York gallery on October 14, 2006.



119

120 **PABLO PICASSO** (Spanish, 1881–1973). ***Untitled,*** 1921. Watercolor. 23 x 28 cm. *N07.029. Stolen from a private residence in Mexico on November 21, 2003. See also item nos. 114–117 above.

120

121 **JOAN EARDLEY** (British, 1921–1963). ***Catterline Landscape.*** Pastel on paper. 10.5 x 14.5 cm. *L06.448. Stolen from an auction salesroom in Scotland on August 22, 2006.

121

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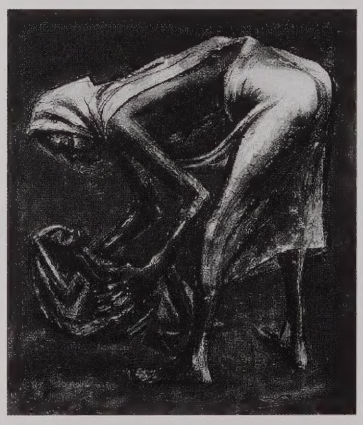
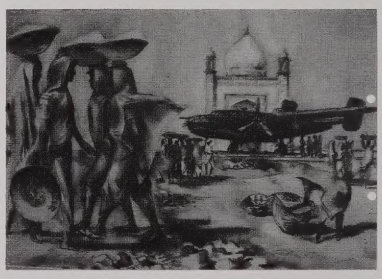
*The following three works on paper were stolen from a private residence in Southern California on January 15, 2007. *N07.028:*

122 **MILLARD SHEETS** (American, 1907–1989). ***Mother and Child***, 1943. Charcoal, ink wash, and gouache on paper. 17" x 14 ½". Signed l/l.



122

123 **MILLARD SHEETS** (American, 1907–1989). ***Building the Airfield, India***, c.1943-44. Watercolor on paper. 20 ¾" x 29 ½". Inscribed l/r: To Doris and Harold with great appreciation – Millard/1944/India.



123

124 **PHIL DIKE** (American, 1906–1990). ***Just Fishin'***, c.1938. Watercolor on paper. 13 ¼" x 20 ⅜". Signed l/r.

124

125

126

*The following three etchings by Dame Elizabeth Frink (English, 1930-1993) were stolen from an art fair in London, England on January 22, 2007. *L07.131:*

125 ***Agamemnon at the Lion's Gate.*** 55.1 x 37.2 cm.

126 ***Hades and Persephone.*** 54.9 x 37.4 cm.

127 ***Jason and the Golden Fleece.*** Ed. no. 57/70.

---

*The following etchings (nos. 128-134) by Joan Miró (Spanish, 1893-1983) were stolen during a burglary from a private residence in Sweden on December 25, 2006. *L07.20. See also items 135 and 136 below:*

128 ***Le Caissier.*** 90 x 68 cm. Ed. no. 51/75.

129 ***La Demoiselle Bascule***, 1969. Etching. 51 x 46 cm. Signed. Ed. no. 54/75. (Dupin no. 486.)

130 ***Polypheme***, 1968. Etching, aquatint, carborundum and cement imprint on Mandeure rag paper. 103 x 75 cm. Signed. Ed. of 75. (Dupin no. 450).

131 ***Village d'Oiseaux.*** 92.5 x 63.5 cm. Ed. no. 41/75.

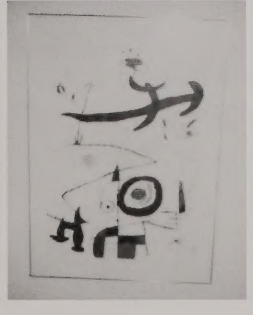
132 ***L'Exile Vert.*** Ed. no. 5/75.

128

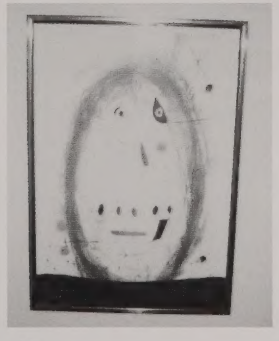
127

129

130



131



132

133 *Le Dandy*, 1969. Etching, aquatint and carborundum. Paper: 59 x 75 cm. Image: 42 x 43.5 cm. Signed. Ed. no. 75/75.

134 *Sous la Grele*. 69 x 43 cm. Ed. no. 54/75.

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*The following two watercolors were stolen during a burglary from a private residence in Sweden along with items 128–134 above. *L07.20:*

135 SIGRID MARIA HJERTEN (Swedish, 1885–1948). ***Italian Boy.*** Watercolor. 45 x 32 cm.

136 FERNAND LÉGER (French, 1881–1955). ***Femme Fleur.*** Watercolor. 35 x 48 cm.

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*The following three works on paper were stolen from a private residence in Los Angeles, California on June 20, 2006. *N06.117. Interpol no. 20060712837.*

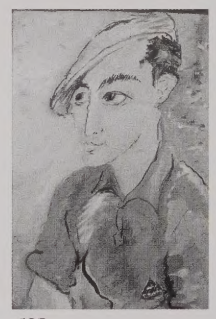
137 FRANZ ACKERMANN (German, b. 1963). ***Trans East West #33: Former Trade Center***, 1999. Mixed media on paper. 13" x 11 ½".

138 FRANZ ACKERMANN (German, b. 1963). ***Ohne Title (Pocket Park Near Payatai Plaza)***, c.1994–95. Mixed media on paper. 7 ½" x 5".

139 NAYLAND BLAKE (American, b. 1960). ***Untitled***, 2003. Pencil on paper. 12" x 9".

133

134



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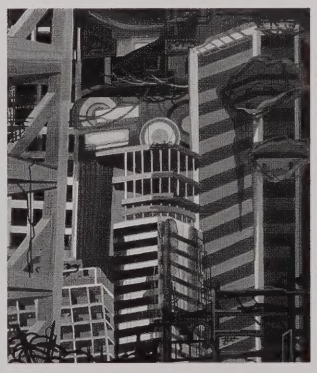

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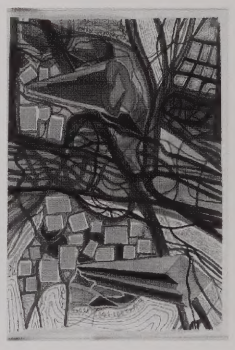

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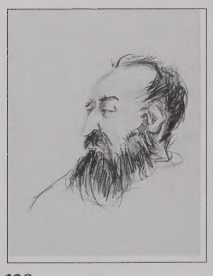


139

140

141

The following two engravings on paper by Norah Borges de Torre (b.1901) were among approximately 590 stolen from the Museo Nacional del Engraving, Buenos Aires, Argentina on September 5, 2006. Interpol no. 20060917210.

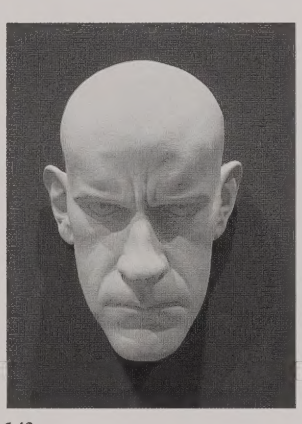
140 ***Jesus Calming the Waters***, c.1918. 30 x 24.5 cm. Inventory no. 4364.

141 ***Farmers***, c.1920. 24.5 x 30 cm. Inventory no. 4359.

STOLEN ART

SCULPTURE

142



143

142 RUTH SNYDER (American, 20th century). ***Bone Rainbow***, c.2005. Steel. Ht: 6'; L: 12'. Stolen from the artist's studio in Los Angeles, CA on November 6, 2006. Interpol no. 20061120795.

143 RON MUECK (Australian, b.1958) ***Untitled***, c.2000. Dental plaster. 7 ½" x 5" x 4 ½". Reported stolen in Los Angeles, CA on July 18, 2006. Interpol no. 20060712827.

144

145

144 DEXTER BENEDICT (American, 20th century). ***Seventh Seal***, 1994. Bronze. Approx. ht: 2 ½'. *N06.149. Stolen in Rochester, NY on July 6, 2005.

145 PAUL COMOLERA (French, 1818. 1897). ***The Spanish Bull***, c.1880. Bronze. 34" x 18" x 14". *N06.174. Stolen from a gallery in Maryland on May 27, 2006.

146

146 AUGUSTE RODIN (French, 1840–1917). ***Jean de Fiennes,*** from ***The Burghers of Calais***, c.1884, cast 1968. Bronze. 18 ¼" x 5 ½" x 11". Inscription: Georges Rudier Fondeur, Paris 1968 and accession number 1974.120. *N07.010. Stolen from Stanford University in Palo Alto, CA on May 6, 1985.

147 ALLAN HOUSER (American, 1915–1994). ***Sioux with Rattle and Fan***, c.1994. Bronze. 16" x 6" x 6" Ed. No. 24/50. *N07.017. Stolen from a gallery in Tulsa, OK on January 9, 2007.

147

148 *Architectural capital* (English, 14th century). Stone. 16.5 x 15.5 cm. *L06.408. Stolen from a museum in London, England on August 9, 2006.

148

149 DAVID WILLIAMS-ELLIS (British, b.1959). ***The Girl.*** Bronze. *L07.124. Stolen from a private residence in Hertfordshire, England on March 12, 2007.

149

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*The following two items were stolen from a church in the Czech Republic on December 22, 2005. *N06.185. Interpol no. 20061018851.*

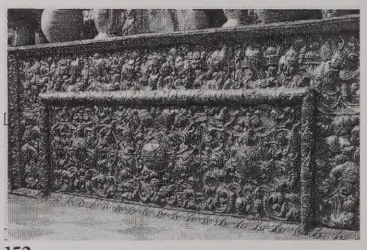
150 ANONYMOUS. ***Gravestone of Dorota Fetenwolfova***, 1605. Sandstone with polychrome. 123 x 69 cm.

150

151 ANONYMOUS. ***Gravestone with Two Figures***, 1581. Red sandstone. 103 x 72 cm.

The following two items were among five embossed silver works of art stolen from the Temple of San Pedro de Tiahuanacu, Province of Ingavi, La Paz, Bolivia on October 11, 2006. Interpol no. 20061019109.

151



152

152 ***Frontal.*** Embossed silver. Ht: 106 cm. W: 273 cm.

153 ***Gradillas*** (one of four pieces). Embossed silver. Ht: 53.5 cm. W: 101 cm.

153

154

155

*The following bronze items were stolen from the garden of the Singer Museum in Laren, The Netherlands on January 17, 2007. *L07.52.:*

154 PÉPÉ GRÉGOIRE (Dutch, b.1915) *Middelpuntvliedende Kracht.* Ht.: 83 cm.

155 FRANCISCA ZIJLSTRA (Dutch, 20th–21st century). *Twee Dansende Waspitten.* 130 x 50 x 54 cm.

156 CAREL VAN PAMPUS (Dutch, 20th –21st century). *Torso.* 132 x 50 x 54 cm.

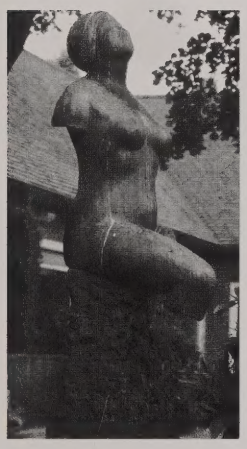
157 PIETER DE MONCHY (Dutch 20th –21st century). *Albert Schweitzer.* 122 x 44 x 31.5 cm.

158 MARTIN BORGORD (American, 1869–1935). *Staande Man.* 99 x 45.5 x 26 cm.

159 MARTIN BORGORD. *Staande Vrouw.* 100 x 28.5 x 30 cm.

160 L.C. DUDOK DE WIT (Dutch, 1843 1913). *Kees de Tippelaar.* Bronze. *L07.54. Stolen from a public garden in the Netherlands on January 9, 2007.

161 JOHN HENRY WADDELL (American, b.1921) *Generations*, c.1990–2005 Copper. The work is comprised of eight separate pieces, two of which are shown here. *N07.032. Stolen from a private residence in Sedona, AZ on February 16, 2006.



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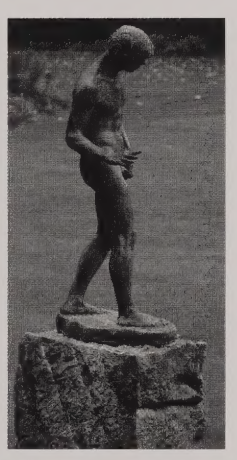

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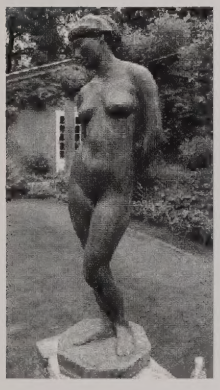

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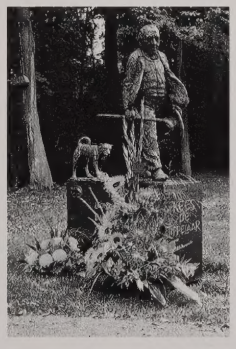


160

161

ANTIQUITIES

162 *Hieron*, relief from Herakleia Hieron (Roman). See color photo on inside back cover.

MISSING ART

PAINTINGS

The following three paintings were among six left with an appraiser by a now-deceased Hungarian citizen in April 2006. His family does not know the whereabouts of the paintings and is trying to recover them. Interpol. No. 20061017958.

8

9

8 THEODOR PALLADY (Romanian, 1871–1956). ***Nude Woman.*** Colored crayon on paper. Monogram left center: TP. Framed: 50 x 30 cm.

9 GHEORGHE IONESCU (Romanian, 1912–71). ***Landscape with Danube and Peasant Woman.*** Oil on canvas. Signed l/r. Framed: 50 x 80 cm.

10 ***Forest.*** Oil on canvas. Framed: 70 x 40 cm.

10

11

11 MARTHA CROCKER. ***Cutting Paper Dolls***, 1938. Oil on canvas. 20" x 24". Signed l/r. *N07.019. Reported by a private owner as missing while in transit from Michigan to Connecticut sometime in 1964 or 1965.

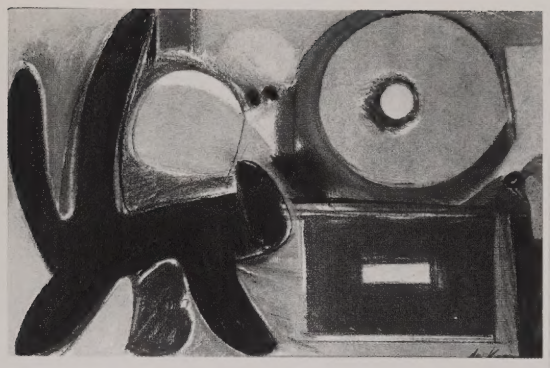
12 ROY LICHTENSTEIN (American, 1923–1997). ***Electric Cord***, 1961. Oil on canvas. 28" x 18". *N07.049. Reported missing from a New York gallery since sometime in 1970.

13 EDMUND THORNTON CRAWFORD (Scottish, 1806–1885). ***Marine View.*** Oil on canvas. 19.5 x 23.5 cm. *L07.153. Reported missing in transit (postal loss) in England on March 8, 2007.

12

13

* Numbering for the year 2006/2007 Cumulative Index of Missing Art began with the last issue, Vol. 9, no. 1.



14

MISSING ART

WORKS ON PAPER

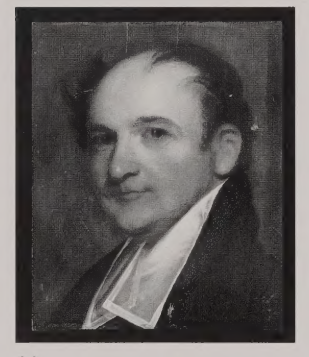
14 **WILLEM DE KOONING** (Dutch/American, 1904–1997). ***Abstract Drawing in Blue, Red, and Yellow.*** Ink on paper. 33 x 42 cm. Signed l/r. *N07.035. Reported missing from a private residence in New York c.1996.

RECOVERED ART

PAINTINGS

The following two paintings, reported missing from Harvard University in 1968 and 1971, were recovered after they were sold at auction at Stair Galleries in Hudson, NY on October 21, 2006. The paintings were part of the estate of William M. V. Kingsland, who died in March 2006. An FBI investigation into Kingsland's collection is underway.

13



14

13 **JOHN SINGLETON COPLEY** (American, 1738–1815). ***Portrait of William Ponsonby, Second Earl of Bessborough***, 1790. Oil on canvas.

14 **GILBERT STUART** (American, 1755 1828). ***Portrait of John Thornton Kirkland***, former President, Harvard University (American, 18th century).

15

15 **FRANCISCO DE GOYA Y LUCIENTES** (Spanish, 1746–1828). ***Children with a Cart***, 1778. Oil on canvas. *N06.184. Stolen on November 7, 2006 while in transit from the Toledo Museum in Ohio to the Guggenheim Museum in New York for an exhibition. Recovered by the FBI in New Jersey on November 20, 2006.

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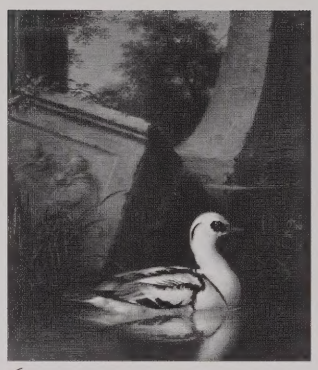
* Numbering for the year 2006/2007 Cumulative Index of Recovered Art began with the last issue, Vol. 9, no. 1.

RECOVERED ART

16 **DIETRICH FINDORFF** (German, 1722–1772). ***Duck.*** Approx: 55 x 48 cm. *W03.18. Shown: one of a pair. The duck paintings were reported missing from the Schwerin Museum in Germany during World War II and emerged for sale in Paris in 2005 after they had been consigned by a French collector. After negotiations involving the ALR, they were restituted to the museum in 2006.



16

17 **PABLO PICASSO** (Spanish, 1881–1973). ***Still Life with Portrait.*** 82 x 100.3 cm. *W01.45. This painting, with the help of the ALR, was restituted to heirs of its pre-WWII owners and sold at auction by Christie's in New York on November 8, 2006.

17

WORKS ON PAPER

18 **RICHARD DIEBENKORN** (American, 1922–1993). ***Woman on Beach,*** 1964. Watercolor. 17" x 12¼". Reported stolen on March 6, 2002 after a forgery was created and the original sold. The ALR recovered the work after identifying it in an auction house catalogue. *N03.231/R782.

18

MUSICAL INSTRUMENTS

19 **CARLO TONONI** (Italian, 1675–1730). ***Violin,*** c.1700–30. L: 14". One of two violins stolen from the private residence of a Los Angeles Philharmonic musician in Los Angeles, CA on December 22, 2006 (*N07.13) and recovered on March 12, 2007 after the owner of a Parisian violin shop alerted police that an individual had tried to sell him the violins.

19

THANK YOU

IFAR gratefully acknowledges the following contributors of $250 or above who helped support its activities in 2006.

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Peter J. Sharp Foundation
Eugene V. and Clare E. Thaw Charitable Trust

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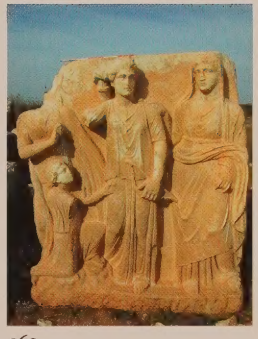
87

88

97

102



162

87 **PABLO PICASSO** (Spanish, 1881–1973). ***Maya with a Doll.*** Oil on canvas. 73 x 60 cm. Dated l/r: Jan. 22, 1938. (Zervos IX:101.) This is a portrait of Picasso's daughter Maya, whose mother was Marie-Thérèse Walter. *L07.112. Stolen along with items nos. 86 and 118, from the Paris, France home of Diana Widmaier-Picasso, Picasso's granddaughter, on February 26–27, 2007.

88 **VASSILIOS GERMENIS** (Greek, 1896–1966) ***Landscape with Woman.*** Oil on canvas. 78 x 108 cm. Signed l/r. *N07.059. One of eight paintings by Greek artists stolen from the apartment of the late Elisabeth Godley in Athens, Greece sometime between August 1 and November 21, 2006. See also, item nos. 89–95.

97 **EUGÈNE BOUDIN** (French, 1824–1898). ***Trouville, les jetées, marée basse***, c.1892-96. Oil on cradled panel. 13" x 9 ¼". "LUGI 286" at l/r. *N06.224. Stolen along with item no. 96 from a private residence in Maplewood, NJ sometime between November 2003 and May 2004.

102 **CORNEILLE DE LYON** (Dutch/French, 1500–1575) ***Portrait of a Woman with a Headdress.*** One of five paintings (see item nos. 102–106) still missing from more than 35 items stolen during a violent burglary in which a murder was committed at a residence in Paris, France in September 2006.

162 ***Hieron***, relief from Herakleia Hieron (Roman) Marble. 1.65 x 1.45 x 1.40 m. Depicts the slaughter of the Niobids. Stolen from an excavation site in Tavas, Denizli, Turkey on May 9, 2006. Interpol no. 20060507952.

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